

APPENDIX

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APPENDIX A

**IN THE SUPREME COURT OF
THE STATE OF NEVADA**

META PLATFORMS, INC. F/K/A
FACEBOOK, INC.,
Petitioner,

vs.

THE EIGHTH JUDICIAL
DISTRICT COURT OF THE
STATE OF NEVADA, IN AND
FOR THE COUNTY OF CLARK;
AND THE HONORABLE
JOANNA KISHNER, DISTRICT
JUDGE,

Respondents,

and

THE STATE OF NEVADA,

Real Party in Interest.

No. 89920

META PLATFORMS, INC. F/K/A
FACEBOOK, INC.,
Petitioner,

vs.

THE EIGHTH JUDICIAL
DISTRICT COURT OF THE
STATE OF NEVADA, IN AND
FOR THE COUNTY OF CLARK;
AND THE HONORABLE
JOANNA KISHNER, DISTRICT
JUDGE,

Respondents,

No. 89921

and THE STATE OF NEVADA, Real Party in Interest.	
META PLATFORMS, INC. F/K/A FACEBOOK, INC.; AND INSTAGRAM, LLC, Petitioners, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JOANNA KISHNER, DISTRICT JUDGE, Respondents, and THE STATE OF NEVADA. Real Party in Interest.	No. 89922

ORDER DENYING PETITIONS

These are consolidated original petitions for writs of prohibition and for writs of mandamus, challenging district court orders granting in part, and denying in part, motions to dismiss.

Real party in interest, the State, filed three separate complaints against petitioner Meta Platforms, Inc. regarding its three social media platforms—Messenger, Facebook, and Instagram—asserting claims under the Nevada Deceptive Trade Practices Act (NDTPA), NRS 598.0903 through NRS 598.0999, as well as product liability, negligence, and unjust enrichment claims. The State alleged that Meta knowingly designed its social media platforms to addict young users. And it alleged that Meta

knowingly made misrepresentations and material omissions about the platforms’ safety and failed to warn users about the risks associated with using the platforms. Meta moved to dismiss all three cases, arguing lack of personal jurisdiction and that the claims were otherwise barred by the Communications Decency Act (CDA), codified as 47 U.S.C. § 230, and the First Amendment. The district court denied Meta’s motions to dismiss insofar as they were based on these arguments.¹ Meta now petitions for writ relief in each case. We have consolidated these three petitions.

The issues presented, arguments made, and procedural posture of these cases are nearly identical to those in *TikTok, Inc. v. Eighth Judicial District Court*, 141 Nev., Adv. Op. 51, 578 P.3d 640 (2025) and *Snap, Inc. v. Eighth Judicial District Court*, No. 90276, 2026 WL 501564 (Nev. Feb. 23, 2026) (Order Denying Petition). Because an appeal after a final judgment may not provide a plain, speedy, and adequate remedy when lack of personal jurisdiction or immunity protections may bar an action altogether, we elect to entertain the petitions. *TikTok*, 141 Nev., Adv. Op. 51, 578 P.3d at 646-47. For the reasons stated, herein, however, we deny Meta’s petitions.

The district court properly exercised personal jurisdiction over Meta

Even within the context of a writ petition, “this court reviews de novo a district court’s determination of personal jurisdiction.” *Fulbright & Jaworski LLP v. Eighth*

¹ This was Meta’s first motion to dismiss. The district court granted the first motion in part on unrelated grounds, dismissing all claims without prejudice except for the negligence claim. The State then filed an amended complaint, realleging the previously dismissed claims. Meta again moved to dismiss on grounds not pertinent here, which the district court denied.

Jud. Dist. Ct., 131 Nev. 30, 35, 342 P.3d 997, 1001 (2015) (citation modified). Due process is satisfied if a nonresident defendant's contacts support either general or specific jurisdiction. *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 375, 328 P.3d 1152, 1156 (2014). Here, only specific jurisdiction is at issue. Specific personal jurisdiction is established when the plaintiff can prove (1) the defendant purposefully availed itself of privileges of the state or purposefully directed conduct toward the state, (2) the claims arise from or relate to the purposeful conduct, and (3) traditional notions of fair play and substantial justice support the exercise of jurisdiction over the defendant. *TikTok*, 141 Nev., Adv. Op. 51, 578 P.3d at 647.

We first address the State's NDTPA claims. When the underlying claims sound in intentional tort, courts apply the *Calder* effects test to determine whether the nonresident defendant purposefully directed its conduct at the forum state. *TikTok*, 141 Nev., Adv. Op. 51, 578 P.3d at 647 (referring to *Calder v. Jones*, 465 U.S. 783 (1984)). In determining purposeful direction, we evaluate whether the defendant "(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *Id.* (citation modified).

In *TikTok*, we determined that TikTok expressly aimed its business activities at Nevada through its data collection and targeted marketing of forum residents, pointing out that TikTok's entire business model depended on increasing users' screentime on the platform to capture their demographic and behavioral data and sell advertising opportunities to third parties. *Id.* at 648-49. So too here. The State targets the identical design features in this lawsuit, and Meta's business model similarly depends on maximizing users' time on its platforms to col-

lect personal data and sell advertising in the various forums in which they operate, including Nevada. While the State does not allege that Meta engaged in outdoor advertising or gave a grant to elementary schools like in *TikTok*, the State proffered evidence that Meta sent representatives to Nevada to hold a focus group with young users about their use of Meta platforms and promoted Facebook at conventions to secure distribution agreements with Nevada cellular carriers. These are comparable contacts that provide additional evidence of purposeful direction. The State’s NDTPA misrepresentation claim likewise satisfies the purposeful-direction test. The State alleged that Meta misrepresented and omitted important safety information on its website and in its terms of service to earn trust with Nevada consumers, parents, and guardians to keep young users on the Meta platforms, thereby increasing data collection and ad revenue. Moreover, *TikTok* rejected the argument that Meta makes here with respect to differential targeting of the forum. *TikTok*, 141 Nev., Adv. Op. 51, 578 P.3d at 648 (“Differential targeting is not required so long as TikTok made the requisite purposeful contact and availed itself of the Nevada market.” (citation modified)). So the State’s NDTPA claims, as alleged, satisfied the purposeful-direction prong.

The purposeful-avallment test applies to the State’s negligence and products liability claims. *See Snap Inc.*, No. 90276, 2026 WL 501564, at *1-2 (applying purposeful-avallment test to negligence claim); *Yamashita v. LG Chem, Ltd.*, 62 F.4th 496, 503-04 (9th Cir. 2023) (applying purposeful-avallment test to a products liability claim). This test looks to “whether the defendant’s activities or engagements serving the market within a forum state, or enjoying the benefits of its laws, justify bringing them into

court in that state.” *M.I.A.W. ex. rel. Whitley v. Greyhound Lines, Inc.*, 141 Nev., Adv. Op. 33, 570 P.3d 150, 154 (2025) (citation modified). Purposeful availment exists where the nonresident defendant takes some act showing its intent to exploit the forum’s market. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 359 (2021). The State’s negligence and product liability claims likewise target the design of Meta’s social media platforms and its failure to warn users about the risks of using those platforms in order to continue operating in and benefiting from young users in the Nevada market. The analysis in *TikTok*, as discussed above, equally supports that Meta purposefully availed itself of Nevada with respect to the negligence and failure-to-warn claims.

As to the relatedness prong of the specific-jurisdiction test, *TikTok* again controls. There, we recognized that TikTok did not design its platform or make misrepresentations in the forum state, however, its digital presence in the State “paralleled Ford’s extensive physical presence . . . in *Ford Motor Co.*” 141 Nev., Adv. Op. 51, 578 P.3d at 649 (citation modified). Similarly, Meta’s collection of user data and advertisement, sales in Nevada establishes a pervasive presence that sufficiently relates to the underlying litigation.

Meta does not challenge the State’s showing under the third prong of the specific-jurisdiction test (whether the exercise of jurisdiction was fair and reasonable), and because the State met the first two prongs, Meta’s personal-jurisdiction challenge fails and the district court correctly denied Meta’s motions to dismiss on jurisdictional grounds. *See Milender v. Marcum*, 110 Nev. 972, 977, 879 P.2d 748, 751 (1994) (“It is well established that this court may affirm rulings of the district court on grounds different from those relied upon by the district court.” (citation

modified)). Accordingly, writs of prohibition are not warranted.

Section 230 of the CDA and the First Amendment do not bar the State's claims

“Nevada is a notice-pleading state: thus, our courts liberally construe pleadings to place into issue matters which are fairly noticed to the adverse party.” *TikTok*, 141 Nev., Adv. Op. 51, 578 P.3d at 649 (quoting *W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992)). The district court must dismiss the State’s claims under NRCP 12(b)(5) “only if it appears beyond a reasonable doubt that the State could prove no set of facts, which, if true, would entitle it to relief.” *Id.* (citation modified). Section 230 of the CDA immunizes website operators from liability for third-party content, material, or speech that is posted on the operator’s website. *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1162 (9th Cir. 2008) (en banc). That section “protects from liability (1) a provider or user of an interactive computer service (2) whom a plaintiff seeks to treat, under a state law cause of action, as a publisher or speaker (3) of information provided by another information content provider.” *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100-01 (9th Cir. 2009). Similarly, “curating third-party content and moderating that content can amount to protected expressive activity under the First Amendment.” *TikTok*, 141 Nev., Adv. Op. 51, 578 P.3d at 649 (citing *Moody v. NetChoice, LLC*, 603 U.S. 707, 718 (2024)).

Again, *TikTok* is instructive. Similarly to that case, the State’s complaints—on their faces—do not seek to hold Meta liable for any third-party content it publishes, so Section 230 immunity does not attach. *Id.*, 141 Nev., Adv. Op. 51, 578 P.3d at 651. Instead, the State’s NDTPA claim under NRS 598.091 and its failure-to-warn claims “target

[Meta]’s alleged own knowingly false statements and omissions to regulators and the public about young users’ safety on the platform,” with only a tangential relationship to third-party content. *Id.* (citation modified). The State’s design defect, negligence, and unconscionable-trade-practices claims “explicitly target the design of [Meta]’s platforms rather than the content of posted videos,” which distinguishes this case from *Moody*. *Id.*, 141 Nev., Adv. Op. 51, 578 P.3d at 651 (citation modified); *Snap*, No. 90276, 2026 WL 501564, at *3. In a parallel to *TikTok* and *Snap*, the State seeks to hold Meta liable for “violating its *distinct duty to design a reasonably safe product*” rather than its traditional editorial functions. *TikTok*, 141 Nev., Adv. Op. 51, 578 P.3d at 651 (citation modified); *Snap*, No. 90276, 2026 WL 501564, at *5. We therefore conclude that section 230 of the CDA does not bar the State’s claims when viewed under our standard governing motions to dismiss under NRCP 12(b)(5).

Neither does the First Amendment bar the State’s claims, where “the State explicitly disclaims any intent to impose liability based on any content or its curation and thus alleges a claim that does not target expressive First Amendment activity.” *Id.*, 141 Nev., Adv. Op. 51, 578 P.3d at 652. As to the misrepresentation claim, “the First Amendment does not protect inherently misleading commercial speech.” *Id.* The same argument that Meta makes here, that the alleged misrepresentations were permissible subjective statements of opinion, was plainly rejected in *TikTok*. *Id.* Like in that case, the State points to several affirmative statements that go beyond aspiration or opinion and appear to directly contradict Meta’s internal communications addressing safety issues on the Meta platforms.

Meta’s argument that the State’s failure-to-warn claim compels speech in violation of the First Amendment is

also unavailing. Meta relies on *NetChoice, LLC v. Bonta*, 113 F.4th 1101 (9th Cir. 2024). But *Bonta* addressed a facial First Amendment challenge to a California law that required companies with an online presence to make value judgments about possible harms that might result from children viewing third-party content on its website and report that data to the State. *Id.* at 1109. In contrast, the State does not allege that Meta failed to warn young users about any third-party speech on its platforms; rather, the State alleged that Meta failed to warn users about the allegedly harmful design elements.

Moreover, *Bonta* applied strict scrutiny after determining that the law impermissibly compelled speech, *id.* at 1119-21, whereas the commercial-speech doctrine applies here, *Am. Beverage Ass’n. v. City and Cnty. of San Francisco*, 916 F.3d 749, 755 (9th Cir. 2019) (explaining that under U.S. Supreme Court precedent “the government may compel truthful disclosure in commercial speech as long as the compelled disclosure is reasonably related to a substantial governmental interest” (citation modified)). *Snap* likewise concluded that *Bonta* was distinguishable on this basis. No. 90276, 2026 WL 501564, at *4. Because the State has alleged facts that would entitle the State to relief on its claims without invoking the immunity protections of section 230 of the CDA or the First Amendment, the district court correctly denied Meta’s motions to dismiss. Therefore, mandamus relief is not warranted. Accordingly, we

ORDER the petitions DENIED.

_____, C.J.
Herndon

10a

_____, J.
Pickering

_____, J.
Parraguirre

_____, J.
Bell

_____, J.
Stiglich

_____, J.
Cadish

_____, J.
Lee

APPENDIX B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,
Plaintiff,

vs.

META PLATFORMS, INC.
f/k/a
FACEBOOK, INC.,
Defendant.

Case No.: A-24-
886110-B

*Consolidated with:
A-24-886115-B and
A-24-886120-B
Dept. No.: XXXI*

STATE OF NEVADA,
Plaintiff,

vs.

META PLATFORMS, INC.
f/k/a
FACEBOOK, INC.,
Defendant.

**ORDER GRANT-
ING IN PART AND
DENYING IN
PART META
PLATFORMS, INC.
AND INSTAGRAM
LLC'S MOTION TO
DISMISS**

*[DOCUMENT APPLIES
ONLY TO INSTAGRAM
CASE A-24-886120-B]*

STATE OF NEVADA,
Plaintiff,

vs.

META PLATFORMS, INC.
f/k/a

FACEBOOK, INC., INSTAGRAM LLC

Defendants.

Defendants Meta Platforms, Inc., and Instagram, LLC's (collectively, "Meta") Motion to Dismiss the Complaint in Case A-24-886120-B (the "Instagram case") under NRCP 12(b)(2) and 12(b)(5) came on for hearing on October 15, 2024. Michael J. Gayan, Esq., of KEMP JONES, LLP; Samantha Feeley, Esq., of the State of Nevada, Office of the Attorney General; Philip D. Carlson, Esq., of NACHAWATI LAW GROUP; and David F. Slade, Esq., of WH LAW, appeared for Plaintiff State of Nevada (the "State"). Tamara Beatty Peterson, Esq., of PETERSON BAKER, PLLC; David N. Sneed, Esq., of COVINGTON & BURLING LLP; and Dan R. Waite, Esq., and Daniel F. Polsenberg, Esq., of LEWIS ROCA appeared for Meta.

Meta filed its Motion to Dismiss the Instagram Complaint (A-24-886120-B Doc. ID #16) on July 19, 2024.¹ On September 3, 2024, the State filed a Consolidated Opposition to Meta Platforms, Inc. and Instagram LLC's Motions to Dismiss and Conditional Countermotions (Doc. ID ##210 and 212) and an Appendix (Doc. ID ##211 and 213). Meta filed a Reply in Support of Motion to Dismiss

¹ The State filed three separate actions against Meta: Case No. A-24-886110-B (the "Messenger case"), Case No. A-24-886115-B (the "Facebook case"), and Case No. A-24-886120-B (the "Instagram case"). The Instagram case was initially assigned to Department XV, the Facebook case to Department XIII. On August 1, 2024, pursuant to Stipulation and Order under NRCP 42 and EDCR 2.50(a), the Facebook, Instagram, and Messenger cases were consolidated in this Department XXXI, which was assigned the first-filed, lowest case number of the three cases. *See* Doc. ID #198.

(Doc. ID ##226) and an Appendix thereto (Doc. ID ##227 and 228) on September 27, 2024.

The Court, having considered the papers and pleadings on file and the oral arguments presented by counsel, hereby **GRANTS IN PART** with leave to amend and **DENIES IN PART** Meta’s Motion to Dismiss. Counts I, II, III, IV, and VI are **DISMISSED** with leave to amend.

LEGAL STANDARD

Under NRCP 12(b)(2), a court will dismiss a complaint where the plaintiff has failed to establish personal jurisdiction. *See, e.g., Tricarichi v. Coop. Rabobank, U.A.*, 135 Nev. 87, 87–88, 90, 440 P.3d 645, 647–49 (2019); NRCP 12(b)(2). The plaintiff bears the burden of alleging and ultimately proving facts establishing personal jurisdiction—a burden which “never shifts to the party challenging jurisdiction.” *Trump v. Eighth Jud. Dist. Ct. of State of Nev. In & For Cnty. of Clark*, 109 Nev. 687, 692, 857 P.2d 740, 744 (1993). The plaintiff’s burden is met if it makes a prima facie showing of personal jurisdiction. *See Tricarichi*, 135 Nev. at 90–91. In reviewing evidence of personal jurisdiction, the court “must accept properly supported proffers as true and resolve factual disputes in the plaintiff’s favor.” *Id.* at 91 (citing *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 374, 328 P.3d 1152, 1156 (2014)). “[W]hen factual disputes arise in a proceeding that challenges personal jurisdiction, those disputes must be resolved in favor of the plaintiff.” *Levinson v. Second Jud. Dist. Ct.*, 103 Nev. 404, 407, 742 P.2d 1024, 1026 (1987).

Once the plaintiff’s burden is met, it is defendant’s burden to demonstrate that exercise of personal jurisdiction “would not offend the traditional notions of fair play and substantial justice.” *In re Paul D. Burgauer Revocable*

Living Tr., 138 Nev. Adv. Op. 79, 521 P.3d 1160, 1165 (2022); *Tricarichi*, 135 Nev. at 91.

Under NRCP 12(b)(5), a court will grant a motion to dismiss for failure to state a claim “if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief.” *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). To survive a motion to dismiss, a complaint “must set forth sufficient facts to establish all necessary elements of a claim for relief.” *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984). “All factual allegations of the complaint must be accepted as true,” and courts “must construe the pleading liberally and draw every fair intendment in favor of the [non-moving party].” *Vacation Village, Inc. v. Hitachi Am., Ltd.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994) (citations omitted).

A. THE STATE HAS MADE A PRIMA FACIE SHOWING THAT META IS SUBJECT TO PERSONAL JURISDICTION WITH RESPECT TO INSTAGRAM.

As a threshold issue, Meta argues that the Complaint should be dismissed in its entirety under NRCP 12(b)(2) for failing to establish that Meta is subject to personal jurisdiction in Nevada. The Court finds that, for purposes of assessing a motion to dismiss, the State has made a prima facie showing that Meta is subject to personal jurisdiction and denies Meta’s Motion to Dismiss to the extent it argues that it is not subject to personal jurisdiction in Nevada.

As the United States Supreme Court has explained, the Constitution “limits a state court’s power to exercise jurisdiction over a defendant.” *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358 (2021). There are two types of personal jurisdiction: “general (sometimes

called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction.” *Id.* (citing *Goodyear Dunlop Tires Ops., S. A. v. Brown*, 564 U.S. 915, 919 (2011)). “A state court may exercise general jurisdiction only when a defendant is ‘essentially at home’ in the State.” *Id.* (quoting *Goodyear*, 564 U.S. at 919). By contrast, specific jurisdiction “covers defendants less intimately connected with a State, but only as to a narrower class of claims.” *Id.* at 359.

The State did not contend that Meta was subject to general jurisdiction in Nevada. Therefore, the Court considers only whether Meta is subject to specific jurisdiction.

1. *Meta is subject to specific jurisdiction in Nevada.*

For this Court to properly exercise jurisdiction over Meta in this case, the State must show that Meta “purposefully avail[ed] itself of the privilege of conducting activities with the forum State” of Nevada. *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). “The contacts must be the defendant’s own choice and not ‘random, isolated, or fortuitous.’” *Id.* (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984)). “They must show that the defendant deliberately ‘reached out beyond’ its home—by, for example, ‘exploit[ing] a market’ in the forum State or entering a contractual relationship centered there.” *Id.* (quoting *Walden v. Fiore*, 571 U.S. 277, 285 (2014)).

However, even where the defendant has “deliberately reached” into the forum state, due process requires more for the exercise of personal jurisdiction: the plaintiff’s suit must “arise out of or relate to the defendant’s contacts with the forum.” *Bristol-Myers Squibb Co. v. Super. Ct. of Cal., San Francisco Cnty.*, 582 U.S. 255, 262 (2017)

(quoting *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014)) (cleaned up). Put a bit differently, personal jurisdiction requires the existence of “an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation.” *Id.* (quoting *Goodyear*, 564 U.S. at 919) (cleaned up). That is so because due process requires that parties have “notice” and “fair warning” that they will be subject to a court’s jurisdiction. *Ford Motor Co.*, 592 U.S. at 360 (cleaned up).

“Specific jurisdiction is proper only where the cause of action arises from the defendant’s contacts with the forum.” *Tricarichi*, 135 Nev. at 91 (quoting *Fulbright & Jaworski LLP v. Eighth Judicial Dist. Ct.*, 131 Nev. 30, 37, 342 P.3d 997, 1002 (2015)) (cleaned up). In assessing specific jurisdiction, Nevada courts examine two factors:

- (1) whether the defendant purposefully availed itself of the privilege of acting in the forum state or purposefully directed its conduct towards the forum state, and
- (2) whether the cause of action arose from the defendant’s purposeful contact or activities in connection with the forum state, such that it is reasonable to exercise personal jurisdiction.

Id. (citing *Dogra v. Liles*, 129 Nev. 932, 937, 314 P.3d 952, 955 (2013); *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Ct.*, 122 Nev. 509, 513, 134 P.3d 710, 712–13 (2006)).

“In analyzing whether specific personal jurisdiction exists in a tort action, courts apply the ‘effects test’ derived from *Calder v. Jones*, 465 U.S. 783 (1984), which considers whether the defendant (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing

harm that the defendant knows is likely to be suffered in the forum state.” *Id.* (quoting *Picot v. Weston*, 780 F.3d 1206, 1213–14 (9th Cir. 2015)) (cleaned up). Thus, “the plaintiff’s contacts with the defendant and the forum are not the proper focus of jurisdictional analysis.” *Id.* at 92.

Instead, “the effects inquiry and the question of minimum contacts focuses on the relationship between the defendant, the forum, and the litigation, and ‘the defendant’s suit-related conduct,’ which ‘must create a substantial connection with the forum.’” *Id.* (quoting *Walden*, 571 U.S. at 283–84). Indeed, the connection or relationship “must arise out of contacts that the defendant [itself] creates with the forum state.” *Id.* (quoting *Walden*, 571 U.S. at 284). And the analysis must turn on “the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.” *Id.* (quoting *Walden*, 571 U.S. at 285). That is, the proper question is not whether the plaintiff experienced a particular injury or effect, but whether the defendant’s conduct connects it to the forum in some meaningful way.

a. Meta has purposefully availed itself of the privilege of conducting activities with Nevada.

Here, the Court concludes that Meta has “purposefully avail[ed] itself of the privilege of conducting activities with” Nevada. *See Ford Motor Co.*, 592 U.S. at 359 (quoting *Hanson*, 357 U.S. at 253). For purposes of resolving Meta’s Motion to Dismiss the Instagram case, the Court considered the State’s Complaint and proffered evidence and finds that the State has pleaded sufficient facts and met its burden to make a *prima facie* showing to demonstrate that Meta affirmatively and intentionally reached out to Nevada. Meta has exploited a market in Nevada by permitting Nevada users to download the Instagram app

on phones in the State of Nevada. *See, e.g., Peccole v. Eighth Jud. Dist. Ct.*, 111 Nev. 968, 971, 899 P.2d 568, 570 (1995) (“It is not necessary for a defendant to physically enter the forum; use of the telephone can be sufficient for purposeful availment.” (cleaned up)). Meta has also entered into contractual relations with Nevada-based users through Meta’s terms of service. As alleged in the State’s Complaint, numerous Nevada businesses advertise on the Instagram platform. Therefore, the Court finds that the first *Tricarichi* prong—purposeful availment—is satisfied.

2. The State’s claims arise out of or relate to Meta’s activities in Nevada.

Having determined that Meta, with respect to Instagram, purposefully availed itself of Nevada, the Court turns to the second *Tricarichi* prong—whether Meta’s conduct arises out of or relates to the claims pleaded in the Instagram Complaint. Taking the State’s allegations as true, the Court concludes that the State has made a prima facie showing that its claims arise out of or relate to Meta’s activities related to Instagram in Nevada. *See, e.g., Instagram Compl.* ¶¶ 88, 89. The Court finds, based on the State’s allegations and the Appendix incorporated into the State’s Opposition,² that the instant situation is

² For clarity, the Court considers Meta’s Motion, the State’s Consolidated Opposition, Meta’s Reply, and all appendices thereto. The Court does not take into account, for purposes of resolving Meta’s Motion to Dismiss the Instagram Complaint, the evidentiary hearings held on March 20 and March 21, 2024, in the Messenger case. The March evidentiary hearings were conducted before the Facebook, Instagram, and Messenger cases were consolidated. *See supra* note 1; Doc. ID #198. The Parties had ample opportunity to come to an agreement as to whether the Court should consider the pre-consolidation evidentiary hearings in deciding the instant Motion. Absent such stipulation, the Court declines to do so.

more like *Calder* than *Tricarichi* because everything that has been asserted happened in Nevada and Meta's alleged conduct related to Instagram arises out of or relates to its contacts with Nevada. *Compare Calder*, 465 U.S. at 788–89, with *Tricarichi*, 135 Nev. at 94–95.

3. Exercising personal jurisdiction over Meta in Nevada in this case is reasonable and would not offend traditional notions of fair play and substantial justice.

Even though the Court has determined that Meta purposefully availed itself of Nevada, and that the State's claims arise out of or relate to Meta's contacts with Nevada, the Court's analysis is not complete. The Fourteenth Amendment requires that the exercise of personal jurisdiction be "reasonable," *Trump*, 109 Nev. at 699 (quoting *Judas Priest v. Second Jud. Dist. Ct.*, 104 Nev. 424, 426, 760 P.2d 137, 138 (1988)), and not "offend traditional notions of fair play and substantial justice," *id.* at 698 (quoting *Mizner v. Mizner*, 84 Nev. 268, 270, 439 P.2d 679, 680 (1968)) (cleaned up).

Meta bears the burden of making "a compelling case that the exercise of jurisdiction over [it] would be unreasonable" despite Meta having sufficient minimum contacts with Nevada. *See id.* at 703. The Court concludes that Meta has not met this burden.

Accordingly, the Court holds that Meta is subject to personal jurisdiction with respect to Instagram pursuant to N.R.S. § 14.065 and the authorities cited in this Order. The Court therefore **DENIES** Meta's Motion to Dismiss under NRCP 12(b)(2).

**B. SECTION 230 OF THE COMMUNICATIONS
DECENCY ACT DOES NOT BAR THE
STATE’S CLAIMS.**

Meta moves to dismiss all claims, arguing that Section 230 of the federal Communications Decency Act, 47 U.S.C. § 230, immunizes it from the State’s claims because they would impermissibly impose liability on Meta for deciding how and what third-party content to publish on Instagram, failing to warn of the same, and profiting from such publication.

The State opposes Meta’s argument for dismissal based on the narrow immunity provided in Section 230 because the State seeks to hold Meta liable for its own design features and its own alleged deceptive conduct, and expressly disavows any liability based on third-party content. The State argues that the immunity provided by Section 230(c)(1) does not apply to Meta in the instant case because that statute only protects “Good Samaritans” in narrowly drawn circumstances that are not present here. According to the State, to comply with the duties alleged in the Complaint, Meta would not need to alter third-party content or otherwise engage in publication activities, it would need to change only its own alleged misstatements, marketing, product development, and design decisions. The State further argues that Section 230(e)(3) similarly does not protect Meta because a stated policy goal of the Communications Decency Act is “to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services.” 47 U.S.C. § 230(b)(3). Thus, the State contends that holding Meta liable for its design of Instagram would be consonant with, not inconsistent with Section 230(c) and Congress’ intent expressed in enacting Section 230.

The Court concludes that Section 230 does not provide immunity that bars the State’s claims at the motion to dismiss stage. Section 230 provides that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” *Id.* § 230(c)(1). It also provides that “[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.” *Id.* § 230(e)(3). The Court sees *Lemmon v. Snap, Inc.*, 995 F.3d 1085 (9th Cir. 2021), as instructive. Like the claims in *Lemmon*, the Court determines that the State’s claims here do not concern Meta’s publishing activities and would not impose liability related to third-party content. Instead, the claims concern the design of Instagram and, therefore, are not subject to Section 230 immunity based on the allegations.

C. THE FIRST AMENDMENT DOES NOT BAR THE STATE’S CLAIMS.

Meta moves to dismiss all claims, arguing that the First Amendment bars the State’s claims because (1) they seek to regulate Meta’s protected editorial discretion in disseminating information generated by third parties; and (2) Meta’s statement for which the State seeks to impose liability are protected statements of opinion. Meta contends that the First Amendment protects Meta’s decisions about “which third party content” will be displayed on its services or “how the display will be ordered and organized.” *Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2402, 2406 (2024). And Meta argues that the First Amendment generally protects statements of opinion, *see, e.g., Partington v. Bugliosi*, 56 F.3d 1147, 1160 (9th Cir. 1995), and against claims based on alleged failures to warn of the alleged harms of protected speech, *see, e.g., Bill v. Superior Court*, 137 Cal. App. 3d 1002 (1982).

The State opposes Meta's argument for dismissal based on the First Amendment because the State's claims do not implicate Meta's right to free expression under the First Amendment. The State's claims do not seek to hold Meta liable for the third-party content displayed on Instagram. Under the State's view, that Meta publishes content on Instagram does not provide it a constitutional sanctuary from which to allegedly violate the consumer protection laws of the state of Nevada, especially where the State's claims do not seek to hold Meta liable for the content available on its platforms. The State argues that *Moody v. NetChoice, LLC* has no impact on the First Amendment questions advanced by Meta here. Despite being resolved on purely procedural matters, the Supreme Court's guidance regarding errors in *Moody* has no bearing here according to the State because the State does not attempt to moderate the content displayed on Instagram. Further, the State is not pursuing its claims against Meta for opinions, the State is pursuing its claims against Meta for alleged false factual misrepresentations and intentional omissions Meta knowingly made. The State also does not assert that Meta had a duty to warn regarding the substance of the third-party content it displays.

The Court finds that the First Amendment does not bar the State's claims at the motion to dismiss stage. The First Amendment (incorporated against the states by the Fourteenth Amendment) provides that the government cannot "abridg[e] the freedom of speech." U.S. Const. Amend. I. The Court determines that the State's claims do not appear to regulate Meta's speech or publishing activities. According to the Complaint, the State's claims concern Meta's alleged conduct and they do not concern third-party content. The Court is required, at the motion

to dismiss stage, to accept those allegations as they are pleaded.

D. THE COURT DISMISSES THE NEVADA DECEPTIVE TRADE PRACTICES ACT CLAIMS (COUNTS I AND II) WITH LEAVE TO AMEND.

Meta argues that the Nevada Deceptive Trade Practices Act (“NDTPA”) claims fail to state a claim because (1) the statute exempts publishers engaged in the dissemination of information; (2) the statute only applies to “goods or services for sale or lease,” which Instagram is not; (3) the claims of deceptive practices fail to meet Rule 9(b)’s particularity standard; and (4) the challenged statements are not actionable.

The State opposes Meta’s argument that the State failed to state a claim under the NDTPA because (1) the exemption Meta relies on is inapplicable as the State is seeking to hold Meta liable for its own conduct (including its own use of addictive design features and its own material misrepresentations and omissions); (2) the statute applies to Meta, especially since it extends to knowingly false representations made in a transaction; (3) Rule 9(b) does not apply to the State’s NDTPA claims, but even if it did the State has identified Meta’s misrepresentations with sufficient particularity; and (4) Meta’s misrepresentations are actionable statements of fact.

The Court holds that the State has not adequately alleged how the transactions at issue here are “goods or services for sale or lease,” as required by N.R.S. § 598.0915 or that there should be an extension of the current case law regarding N.R.S. § 598.0915. The State is granted leave to amend to attempt to adequately allege these claims.

The Court dismisses these claims with leave to amend on this basis and defers ruling on Meta’s other arguments for dismissal at this juncture.

E. THE COURT DISMISSES THE PRODUCT LIABILITY CLAIMS (COUNTS III AND IV) WITH LEAVE TO AMEND.

Meta argues that Counts III and IV fail to state a claim because (1) Instagram does not qualify as a “product” for purposes of Nevada product liability law; and (2) the Complaint fails to adequately allege that Instagram proximately caused the alleged injuries.

The State opposes Meta’s argument for dismissal because (1) social media platforms, like Instagram, are products; and (2) even though proximate cause is an issue of fact for a jury to resolve rather than to be considered in a motion to dismiss, the State has adequately alleged that Meta proximately caused the alleged injuries.

The Court holds that the State has not adequately alleged that Instagram is a “product” for purposes of Nevada product liability law or that a reasonable extension of Nevada product liability law should include Instagram. To state a product liability claim under Nevada law, a plaintiff must allege injuries caused by a “product.” *See, e.g., Schueler v. Ad Art, Inc.*, 136 Nev. 447, 452, 472 P.3d 686, 691 (Nev. App. 2020). “The determination of whether something constitutes a product for purposes of [a product liability claim]” is a question for the Court, and should be conducted on a case-by-case basis. *Id.* Nevada courts “*must* apply section 402A of the Second Restatement [of Torts], including the public policy objectives of the doctrine, as well as the relevant precedents interpreting section 402A.” *Id.* at 455 (emphasis in original). Courts are also permitted to use appropriate definitions as guidance

when determining whether something is a “product,” including the definition found in the Restatement (Third) of Torts. *Id.* The Complaint does not adequately allege that Instagram is a product under existing law or under an appropriate extension of existing law. The State is granted leave to amend to attempt to adequately allege these claims.

F. THE COURT DENIES THE MOTION TO DISMISS THE NEGLIGENCE CLAIM (COUNT V).

Meta argues that Count V fails to state a claim for negligence because the State has failed to allege (1) a cognizable legal duty underlying the claim and (2) that Instagram proximately caused any of the alleged injuries.

The State opposes Meta’s arguments for dismissal.

The Court holds that the negligence claim is adequately pleaded. The Court concludes that the question on a motion to dismiss under NRCP 12(b) is whether a complaint puts the defendant on notice of the allegedly violated duty. Here, the Complaint puts Meta on notice of the duty the State alleges. Whether that alleged duty is legally sufficient or recognized under the law is a question that will be addressed at later stages of the litigation.

On the proximate cause element, the Court concludes that whether Instagram proximately caused the injuries is a question of fact that cannot be resolved at the motion to dismiss stage. The State has adequately pleaded that Meta proximately caused the alleged injuries.

G. THE COURT DISMISSES THE UNJUST ENRICHMENT CLAIM (COUNT VI) WITH LEAVE TO AMEND.

The Court dismisses the unjust enrichment claim with leave to amend. The Complaint does not adequately plead

how Meta was unjustly enriched at the State's expense, as opposed to why Meta was allegedly unjustly enriched at others' expense.

CONCLUSION

For the reasons stated herein, Meta's Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART**. Counts I, II, III, IV, and VI are **DISMISSED** with leave to amend. The State shall file an Amended Complaint, if any, within fourteen (14) days of the Notice of Entry of this Order.

Dated this 15th day of November, 2024

6E2 410 A8EB B948
Joanna S. Kushner
District Court Judge

APPENDIX C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA, Plaintiff, vs. META PLATFORMS, INC. f/k/a FACEBOOK, INC., Defendant.	Case No.: A-24- 886110-B <i>Consolidated with:</i> <i>A-24-886115-B and</i> <i>A-24-886120-B</i> Dept. No.: XXXI
STATE OF NEVADA, Plaintiff, vs. META PLATFORMS, INC. f/k/a FACEBOOK, INC. Defendant.	ORDER GRANTING IN PART AND DENY- ING IN PART META PLATFORMS, INC.'S MOTION TO DIS- MISS <i>[DOCUMENT APPLIES ONLY TO FACEBOOK CASE A-24-886115-B]</i>
STATE OF NEVADA, Plaintiff, vs. META PLATFORMS, INC. f/k/a	

FACEBOOK, INC., INSTAGRAM LLC

Defendants

Defendant Meta Platforms, Inc.’s (“Meta”) Motion to Dismiss the Complaint in Case A-24-886115-B (the “Facebook case”) under NRCP 12(b)(2) and 12(b)(5) came on for hearing on October 15, 2024. Michael J. Gayan, Esq., of KEMP JONES, LLP; Samantha Feeley, Esq., of the State of Nevada, Office of the Attorney General; Philip D. Carlson, Esq., of NACHAWATI LAW GROUP; and David F. Slade, Esq., of WH LAW, appeared for Plaintiff State of Nevada (the “State”). Tamara Beatty Peterson, Esq., of PETERSON BAKER, PLLC; David N. Sneed, Esq., of COVINGTON & BURLING LLP; and Dan R. Waite, Esq., and Daniel F. Polsenberg, Esq., of LEWIS ROCA appeared for Meta.

Meta filed its Motion to Dismiss the Facebook Complaint (A-24-886115-B Doc. ID #14) on July 17, 2024.¹ On September 3, 2024, the State filed a Consolidated Opposition to Meta Platforms, Inc. and Instagram LLC’s Motions to Dismiss and Conditional Countermotions (Doc. ID ##210 and 212) and an Appendix (Doc. ID ##211 and 213). Meta filed a Reply in Support of Motion to Dismiss

¹ The State filed three separate actions against Meta: Case No. A-24-886110-B (the “Messenger case”), Case No. A-24-886115-B (the “Facebook case”), and Case No. A-24-886120-B (the “Instagram case”). The Instagram case was initially assigned to Department XV, the Facebook case to Department XIII. On August 1, 2024, pursuant to Stipulation and Order under NRCP 42 and EDCR 2.50(a), the Facebook, Instagram, and Messenger cases were consolidated in this Department XXXI, which was assigned the first-filed, lowest case number of the three cases. *See* Doc. ID #198.

(Doc. ID ##226) and an Appendix thereto (Doc. ID ##227 and 228) on September 27, 2024.

The Court, having considered the papers and pleadings on file and the oral arguments presented by counsel, hereby **GRANTS IN PART** with leave to amend and **DENIES IN PART** Meta’s Motion to Dismiss. Counts I, II, III, IV, and VI are **DISMISSED** with leave to amend.

LEGAL STANDARD

Under NRCP 12(b)(2), a court will dismiss a complaint where the plaintiff has failed to establish personal jurisdiction. *See, e.g., Tricarichi v. Coop. Rabobank, U.A.*, 135 Nev. 87, 87–88, 90, 440 P.3d 645, 647–49 (2019); NRCP 12(b)(2). The plaintiff bears the burden of alleging and ultimately proving facts establishing personal jurisdiction—a burden which “never shifts to the party challenging jurisdiction.” *Trump v. Eighth Jud. Dist. Ct. of State of Nev. In & For Cnty. Of Clark*, 109 Nev. 687, 692, 857 P.2d 740, 744 (1993). The plaintiff’s burden is met if it makes a prima facie showing of personal jurisdiction. *See Tricarichi*, 135 Nev. at 90–91. In reviewing evidence of personal jurisdiction, the court “must accept properly supported proffers as true and resolve factual disputes in the plaintiff’s favor.” *Id.* at 91 (citing *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 374, 328 P.3d 1152, 1156 (2014)). “[W]hen factual disputes arise in a proceeding that challenges personal jurisdiction, those disputes must be resolved in favor of the plaintiff.” *Levinson v. Second Jud. Dist. Ct.*, 103 Nev. 404, 407, 742 P.2d 1024, 1026 (1987).

Once the plaintiff’s burden is met, it is defendant’s burden to demonstrate that exercise of personal jurisdiction “would not offend the traditional notions of fair play and substantial justice.” *In re Paul D. Burgauer Revocable*

Living Tr., 138 Nev. Adv. Op. 79, 521 P.3d 1160, 1165 (2022); *Tricarichi*, 135 Nev. at 91.

Under NRCP 12(b)(5), a court will grant a motion to dismiss for failure to state a claim “if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief.” *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). To survive a motion to dismiss, a complaint “must set forth sufficient facts to establish all necessary elements of a claim for relief.” *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984). “All factual allegations of the complaint must be accepted as true,” and courts “must construe the pleading liberally and draw every fair intendment in favor of the [non-moving party].” *Vacation Village, Inc. v. Hitachi Am., Ltd.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994) (citations omitted).

A. THE STATE HAS MADE A PRIMA FACIE SHOWING THAT META IS SUBJECT TO PERSONAL JURISDICTION WITH RESPECT TO FACEBOOK.

As a threshold issue, Meta argues that the Complaint should be dismissed in its entirety under NRCP 12(b)(2) for failing to establish that Meta is subject to personal jurisdiction in Nevada. The Court finds that, for purposes of assessing a motion to dismiss, the State has made a prima facie showing that Meta is subject to personal jurisdiction, and denies Meta’s Motion to Dismiss to the extent it argues that it is not subject to personal jurisdiction in Nevada.

As the United States Supreme Court has explained, the Constitution “limits a state court’s power to exercise jurisdiction over a defendant.” *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358 (2021). There are two types of personal jurisdiction: “general (sometimes

called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction.” *Id.* (citing *Goodyear Dunlop Tires Ops., S. A. v. Brown*, 564 U.S. 915, 919 (2011)). “A state court may exercise general jurisdiction only when a defendant is ‘essentially at home’ in the State.” *Id.* (quoting *Goodyear*, 564 U.S. at 919). By contrast, specific jurisdiction “covers defendants less intimately connected with a State, but only as to a narrower class of claims.” *Id.* at 359.

The State did not contend that Meta was subject to general jurisdiction in Nevada. Therefore, the Court considers only whether Meta is subject to specific jurisdiction.

1. *Meta is subject to specific jurisdiction in Nevada.*

For this Court to properly exercise jurisdiction over Meta in this case, the State must show that Meta “purposefully avail[ed] itself of the privilege of conducting activities with the forum State” of Nevada. *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). “The contacts must be the defendant’s own choice and not ‘random, isolated, or fortuitous.’” *Id.* (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984)). “They must show that the defendant deliberately ‘reached out beyond’ its home—by, for example, ‘exploit[ing] a market’ in the forum State or entering a contractual relationship centered there.” *Id.* (quoting *Walden v. Fiore*, 571 U.S. 277, 285 (2014)).

However, even where the defendant has “deliberately reached” into the forum state, due process requires more for the exercise of personal jurisdiction: the plaintiff’s suit must “arise out of or relate to the defendant’s contacts with the forum.” *Bristol-Myers Squibb Co. v. Super. Ct. of Cal., San Francisco Cnty.*, 582 U.S. 255, 262 (2017) (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 127

(2014)) (cleaned up). Put a bit differently, personal jurisdiction requires the existence of “an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation.” *Id.* (quoting *Goodyear*, 564 U.S. at 919) (cleaned up). That is so because due process requires that parties have “notice” and “fair warning” that they will be subject to a court’s jurisdiction. *Ford Motor Co.*, 592 U.S. at 360 (cleaned up).

“Specific jurisdiction is proper only where the cause of action arises from the defendant’s contacts with the forum.” *Tricarichi*, 135 Nev. at 91 (quoting *Fulbright & Jaworski LLP v. Eighth Judicial Dist. Ct.*, 131 Nev. 30, 37, 342 P.3d 997, 1002 (2015)) (cleaned up). In assessing specific jurisdiction, Nevada courts examine two factors:

- (1) whether the defendant purposefully availed itself of the privilege of acting in the forum state or purposefully directed its conduct towards the forum state, and
- (2) whether the cause of action arose from the defendant’s purposeful contact or activities in connection with the forum state, such that it is reasonable to exercise personal jurisdiction.

Id. (citing *Dogra v. Liles*, 129 Nev. 932, 937, 314 P.3d 952, 955 (2013); *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Ct.*, 122 Nev. 509, 513, 134 P.3d 710, 712–13 (2006)).

“In analyzing whether specific personal jurisdiction exists in a tort action, courts apply the ‘effects test’ derived from *Calder v. Jones*, 465 U.S. 783 (1984), which considers whether the defendant (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in

the forum state.” *Id.* (quoting *Picot v. Weston*, 780 F.3d 1206, 1213–14 (9th Cir. 2015)) (cleaned up). Thus, “the plaintiff’s contacts with the defendant and the forum are not the proper focus of jurisdictional analysis.” *Id.* at 92.

Instead, “the effects inquiry and the question of minimum contacts focuses on the relationship between the defendant, the forum, and the litigation, and ‘the defendant’s suit-related conduct,’ which ‘must create a substantial connection with the forum.’” *Id.* (quoting *Walden*, 571 U.S. at 283–84). Indeed, the connection or relationship “must arise out of contacts that the defendant [itself] creates with the forum state.” *Id.* (quoting *Walden*, 571 U.S. at 284). And the analysis must turn on “the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.” *Id.* (quoting *Walden*, 571 U.S. at 285). That is, the proper question is not whether the plaintiff experienced a particular injury or effect, but whether the defendant’s conduct connects it to the forum in some meaningful way.

- a. Meta has purposefully availed itself of the privilege of conducting activities with Nevada.

Here, the Court concludes that Meta has “purposefully avail[ed] itself of the privilege of conducting activities with” Nevada. *See Ford Motor Co.*, 592 U.S. at 359 (quoting *Hanson*, 357 U.S. at 253). For purposes of resolving Meta’s Motion to Dismiss the Facebook case, the Court considered the State’s Complaint and proffered evidence and finds that the State has pleaded sufficient facts and met its burden to make a *prima facie* showing to demonstrate that Meta affirmatively and intentionally reached out to Nevada. Meta has exploited a market in Nevada by permitting Nevada users to download the Facebook app on phones in the State of Nevada. *See, e.g., Peccole v.*

Eighth Jud. Dist. Ct., 111 Nev. 968, 971, 899 P.2d 568, 570 (1995) (“It is not necessary for a defendant to physically enter the forum; use of the telephone can be sufficient for purposeful availment.” (cleaned up)). Meta has also entered into contractual relations with Nevada-based users through Meta’s terms of service. As alleged in the State’s Complaint, numerous Nevada businesses advertise on the Facebook platform. Therefore, the Court finds that the first *Tricarichi* prong—purposeful availment—is satisfied.

2. The State’s claims arise out of or relate to Meta’s activities in Nevada.

Having determined that Meta, with respect to Facebook, purposefully availed itself of Nevada, the Court turns to the second *Tricarichi* prong—whether Meta’s conduct arises out of or relates to the claims pleaded in the Facebook Complaint. Taking the State’s allegations as true, the Court concludes that the State has made a *prima facie* showing that its claims arise out of or relate to Meta’s activities related to Facebook in Nevada. *See, e.g.*, Facebook Compl. ¶¶ 81, 82. The Court finds, based on the State’s allegations and the Appendix incorporated into the State’s Opposition,² that the instant situation is more like *Calder* than *Tricarichi* because everything that has been

² For clarity, the Court considers Meta’s Motion, the State’s Consolidated Opposition, Meta’s Reply, and all appendices thereto. The Court does not take into account, for purposes of resolving Meta’s Motion to Dismiss the Facebook Complaint, the evidentiary hearings held on March 20 and March 21, 2024, in the Messenger case. The March evidentiary hearings were conducted before the Facebook, Instagram, and Messenger cases were consolidated. *See supra* note 1; Doc. ID #198. The Parties had ample opportunity to come to an agreement as to whether the Court should consider the pre-consolidation evidentiary hearings in deciding the instant Motion. Absent such stipulation, the Court declines to do so.

asserted happened in Nevada and Meta’s alleged conduct related to Facebook arises out of or relates to its contacts with Nevada. *Compare Calder*, 465 U.S. at 788–89, with *Tricarichi*, 135 Nev. at 94–95.

3. Exercising personal jurisdiction over Meta in Nevada in this case is reasonable and would not offend traditional notions of fair play and substantial justice.

Even though the Court has determined that Meta purposefully availed itself of Nevada, and that the State’s claims arise out of or relate to Meta’s contacts with Nevada, the Court’s analysis is not complete. The Fourteenth Amendment requires that the exercise of personal jurisdiction be “reasonable,” *Trump*, 109 Nev. at 699 (quoting *Judas Priest v. Second Jud. Dist. Ct.*, 104 Nev. 424, 426, 760 P.2d 137, 138 (1988)), and not “offend traditional notions of fair play and substantial justice,” *id.* at 698 (quoting *Mizner v. Mizner*, 84 Nev. 268, 270, 439 P.2d 679, 680 (1968)) (cleaned up).

Meta bears the burden of making “a compelling case that the exercise of jurisdiction over [it] would be unreasonable” despite Meta having sufficient minimum contacts with Nevada. *See id.* at 703. The Court concludes that Meta has not met this burden.

Accordingly, the Court holds that Meta is subject to personal jurisdiction with respect to Facebook pursuant to N.R.S. § 14.065 and the authorities cited in this Order. The Court therefore **DENIES** Meta’s Motion to Dismiss under NRCP 12(b)(2).

**B. SECTION 230 OF THE COMMUNICATIONS
DECENCY ACT DOES NOT BAR THE
STATE’S CLAIMS.**

Meta moves to dismiss all claims, arguing that Section 230 of the federal Communications Decency Act, 47 U.S.C. § 230, immunizes it from the State’s claims because they would impermissibly impose liability on Meta for deciding how and what third-party content to publish on Facebook, failing to warn of the same, and profiting from such publication.

The State opposes Meta’s argument for dismissal based on the narrow immunity provided in Section 230 because the State seeks to hold Meta liable for its own design features and its own alleged deceptive conduct, and expressly disavows any liability based on third-party content. The State argues that the immunity provided by Section 230(c)(1) does not apply to Meta in the instant case because that statute only protects “Good Samaritans” in narrowly drawn circumstances that are not present here. According to the State, to comply with the duties alleged in the Complaint, Meta would not need to alter third-party content or otherwise engage in publication activities, it would need to change only its own alleged misstatements, marketing, product development, and design decisions. The State further argues that Section 230(e)(3) similarly does not protect Meta because a stated policy goal of the Communications Decency Act is “to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services.” 47 U.S.C. § 230(b)(3). Thus, the State contends that holding Meta liable for its design of Facebook would be consonant with, not inconsistent with Section 230(c) and Congress’ intent expressed in enacting Section 230.

The Court concludes that Section 230 does not provide immunity that bars the State’s claims at the motion to dismiss stage. Section 230 provides that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” *Id.* § 230(c)(1). It also provides that “[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.” *Id.* § 230(e)(3). The Court sees *Lemmon v. Snap, Inc.*, 995 F.3d 1085 (9th Cir. 2021), as instructive. Like the claims in *Lemmon*, the Court determines that the State’s claims here do not concern Meta’s publishing activities and would not impose liability related to third-party content. Instead, the claims concern the design of Facebook and, therefore, are not subject to Section 230 immunity based on the allegations.

C. THE FIRST AMENDMENT DOES NOT BAR THE STATE’S CLAIMS.

Meta moves to dismiss all claims, arguing that the First Amendment bars the State’s claims because (1) they seek to regulate Meta’s protected editorial discretion in disseminating information generated by third parties; and (2) Meta’s statement for which the State seeks to impose liability are protected statements of opinion. Meta contends that the First Amendment protects Meta’s decisions about “which third party content” will be displayed on its services or “how the display will be ordered and organized.” *Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2402, 2406 (2024). And Meta argues that the First Amendment generally protects statements of opinion, *see, e.g., Partington v. Bugliosi*, 56 F.3d 1147, 1160 (9th Cir. 1995), and against claims based on alleged failures to warn of the alleged harms of protected speech, *see, e.g., Bill v. Superior Court*, 137 Cal. App. 3d 1002 (1982).

The State opposes Meta's argument for dismissal based on the First Amendment because the State's claims do not implicate Meta's right to free expression under the First Amendment. The State's claims do not seek to hold Meta liable for the third-party content displayed on Facebook. Under the State's view, that Meta publishes content on Facebook does not provide it a constitutional sanctuary from which to allegedly violate the consumer protection laws of the state of Nevada, especially where the State's claims do not seek to hold Meta liable for the content available on its platforms. The State argues that *Moody v. NetChoice, LLC* has no impact on the First Amendment questions advanced by Meta here. Despite being resolved on purely procedural matters, the Supreme Court's guidance regarding errors in *Moody* has no bearing here according to the State because the State does not attempt to moderate the content displayed on Facebook. Further, the State is not pursuing its claims against Meta for opinions, the State is pursuing its claims against Meta for alleged false factual misrepresentations and intentional omissions Meta knowingly made. The State also does not assert that Meta had a duty to warn regarding the substance of the third-party content it displays.

The Court finds that the First Amendment does not bar the State's claims at the motion to dismiss stage. The First Amendment (incorporated against the states by the Fourteenth Amendment) provides that the government cannot "abridg[e] the freedom of speech." U.S. Const. Amend. I. The Court determines that the State's claims do not appear to regulate Meta's speech or publishing activities. According to the Complaint, the State's claims concern Meta's alleged conduct and they do not concern third-party content. The Court is required, at the motion to dismiss stage, to accept those allegations as they are pleaded.

D. THE COURT DISMISSES THE NEVADA DECEPTIVE TRADE PRACTICES ACT CLAIMS (COUNTS I AND II) WITH LEAVE TO AMEND.

Meta argues that the Nevada Deceptive Trade Practices Act (“NDTPA”) claims fail to state a claim because (1) the statute exempts publishers engaged in the dissemination of information; (2) the statute only applies to “goods or services for sale or lease,” which Facebook is not; (3) the claims of deceptive practices fail to meet Rule 9(b)’s particularity standard; and (4) the challenged statements are not actionable.

The State opposes Meta’s argument that the State failed to state a claim under the NDTPA because (1) the exemption Meta relies on is inapplicable as the State is seeking to hold Meta liable for its own conduct (including its own use of addictive design features and its own material misrepresentations and omissions); (2) the statute applies to Meta, especially since it extends to knowingly false representations made in a transaction; (3) Rule 9(b) does not apply to the State’s NDTPA claims, but even if it did the State has identified Meta’s misrepresentations with sufficient particularity; and (4) Meta’s misrepresentations are actionable statements of fact.

The Court holds that the State has not adequately alleged how the transactions at issue here are “goods or services for sale or lease,” as required by N.R.S. § 598.0915 or that there should be an extension of the current case law regarding N.R.S. § 598.0915. The State is granted leave to amend to attempt to adequately allege these claims.

The Court dismisses these claims with leave to amend on this basis and defers ruling on Meta’s other arguments for dismissal at this juncture.

E. THE COURT DISMISSES THE PRODUCT LIABILITY CLAIMS (COUNTS III AND IV) WITH LEAVE TO AMEND.

Meta argues that Counts III and IV fail to state a claim because (1) Facebook does not qualify as a “product” for purposes of Nevada product liability law; and (2) the Complaint fails to adequately allege that Facebook proximately caused the alleged injuries.

The State opposes Meta’s argument for dismissal because (1) social media platforms, like Facebook, are products; and (2) even though proximate cause is an issue of fact for a jury to resolve rather than to be considered in a motion to dismiss, the State has adequately alleged that Meta proximately caused the alleged injuries.

The Court holds that the State has not adequately alleged that Facebook is a “product” for purposes of Nevada product liability law or that a reasonable extension of Nevada product liability law should include Facebook. To state a product liability claim under Nevada law, a plaintiff must allege injuries caused by a “product.” *See, e.g., Schueler v. Ad Art, Inc.*, 136 Nev. 447, 452, 472 P.3d 686, 691 (Nev. App. 2020). “The determination of whether something constitutes a product for purposes of [a product liability claim]” is a question for the Court, and should be conducted on a case-by-case basis. *Id.* Nevada courts “*must* apply section 402A of the Second Restatement [of Torts], including the public policy objectives of the doctrine, as well as the relevant precedents interpreting section 402A.” *Id.* at 455 (emphasis in original). Courts are also permitted to use appropriate definitions as guidance when determining whether something is a “product,” including the definition found in the Restatement (Third) of Torts. *Id.* The Complaint does not adequately allege that

Facebook is a product under existing law or under an appropriate extension of existing law. The State is granted leave to amend to attempt to adequately allege these claims.

F. THE COURT DENIES THE MOTION TO DISMISS THE NEGLIGENCE CLAIM (COUNT V).

Meta argues that Count V fails to state a claim for negligence because the State has failed to allege (1) a cognizable legal duty underlying the claim and (2) that Facebook proximately caused any of the alleged injuries.

The State opposes Meta's arguments for dismissal.

The Court holds that the negligence claim is adequately pleaded. The Court concludes that the question on a motion to dismiss under NRCP 12(b) is whether a complaint puts the defendant on notice of the allegedly violated duty. Here, the Complaint puts Meta on notice of the duty the State alleges. Whether that alleged duty is legally sufficient or recognized under the law is a question that will be addressed at later stages of the litigation.

On the proximate cause element, the Court concludes that whether Facebook proximately caused the injuries is a question of fact that cannot be resolved at the motion to dismiss stage. The State has adequately pleaded that Meta proximately caused the alleged injuries.

G. THE COURT DISMISSES THE UNJUST ENRICHMENT CLAIM (COUNT VI) WITH LEAVE TO AMEND.

The Court dismisses the unjust enrichment claim with leave to amend. The Complaint does not adequately plead how Meta was unjustly enriched at the State's expense, as opposed to why Meta was allegedly unjustly enriched at others' expense.

CONCLUSION

For the reasons stated herein, Meta's Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART**. Counts I, II, III, IV, and VI are **DISMISSED** with leave to amend. The State shall file an Amended Complaint, if any, within fourteen (14) days of the Notice of Entry of this Order.

Dated this 14th day of November, 2024

45D 76E B47B 8646
Joanna S. Kishner
District Court Judge

APPENDIX D

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,
Plaintiff,

Case No.: A-24-886110-B
Dept. No.: XXXI

vs.

META PLATFORMS,
INC. f/k/a
FACEBOOK, INC.,
Defend-
ant.

STATE OF NEVADA,
Plaintiff,

**ORDER GRANTING IN
PART AND DENYING
IN PART META PLAT-
FORMS, INC.'S MO-
TION TO DISMISS**

vs.

META PLATFORMS,
INC. f/k/a
FACEBOOK, INC.,
Defend-
ant.

*[DOCUMENT APPLIES
ONLY TO MESSENGER
CASE A-24-886110-B]*

STATE OF NEVADA,
Plaintiff,

vs.

META
PLATFORMS,

INC. f/k/a FACEBOOK, INC., INSTAGRAM LLC Defendants.

Defendant Meta Platforms, Inc.’s (“Meta”) Motion to Dismiss the Complaint in Case A-24-886110-B (the “Messenger case”) under NRCP 12(b)(2) and 12(b)(5) came on for hearing on October 7, 2024. Michael J. Gayan, Esq., of KEMP JONES, LLP; Raquel Fulghum, Esq., Mark J. Krueger, Esq., of the State of Nevada, Office of the Attorney General; Philip D. Carlson, Esq. of NACHAWATI LAW GROUP; David F. Slade, Esq., of WH LAW, appeared for Plaintiff State of Nevada (the “State”). Tamara Beatty Peterson, Esq., of PETERSON BAKER, PLLC; David N. Sneed, Esq., and Timothy C. Hester, Esq., of COVINGTON & BURLING LLP; and Dan R. Waite, Esq., of LEWIS ROCA appeared for Meta.

Meta filed its Motion to Dismiss (Doc. ID #43) the Messenger Complaint on March 12, 2024. On September 3, 2024, the State filed a Consolidated Opposition to Meta Platforms, Inc. and Instagram LLC’s Motions to Dismiss and Conditional Countermotions (Doc. ID ##210 and 212) and an Appendix (Doc. ID ##211 and 213). Meta filed a Reply in Support of Motion to Dismiss (Doc. ID ##219 and 220) on September 24, 2024.

The Court, having considered the papers and pleadings on file and the oral arguments presented by counsel, hereby **GRANTS IN PART** with leave to amend and **DENIES IN PART** Meta’s Motion to Dismiss. Counts I, II, III, IV, and VI are **DISMISSED** with leave to amend.

I. LEGAL STANDARD

Under NRCP 12(b)(2), a court will dismiss a complaint where the plaintiff has failed to establish personal jurisdiction. *See, e.g., Tricarichi v. Coop. Rabobank, U.A.*, 135 Nev. 87, 87–88, 90, 440 P.3d 645, 647–49 (2019); NRCP 12(b)(2). The plaintiff bears the burden of alleging and ultimately proving facts establishing personal jurisdiction—a burden which “never shifts to the party challenging jurisdiction.” *Trump v. Eighth Jud. Dist. Ct. of State of Nev. In & For Cnty. of Clark*, 109 Nev. 687, 692, 857 P.2d 740, 744 (1993). The plaintiff’s burden is met if it makes a prima facie showing of personal jurisdiction. *See Tricarichi*, 135 Nev. at 90–91. In reviewing evidence of personal jurisdiction, the court “must accept properly supported proffers as true and resolve factual disputes in the plaintiff’s favor.” *Id.* at 91 (citing *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 374, 328 P.3d 1152, 1156 (2014)). “[W]hen factual disputes arise in a proceeding that challenges personal jurisdiction, those disputes must be resolved in favor of the plaintiff.” *Levinson v. Second Jud. Dist. Ct.*, 103 Nev. 404, 407, 742 P.2d 1024, 1026 (1987).

Once the plaintiff’s burden is met, it is defendant’s burden to demonstrate that exercise of personal jurisdiction “would not offend the traditional notions of fair play and substantial justice.” *In re Paul D. Burgauer Revocable Living Tr.*, 138 Nev. Adv. Op. 79, 521 P.3d 1160, 1165 (2022); *Tricarichi*, 135 Nev. at 91.

Under NRCP 12(b)(5), a court will grant a motion to dismiss for failure to state a claim “if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief.” *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). To survive a motion to dismiss, a complaint “must set forth

sufficient facts to establish all necessary elements of a claim for relief.” *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984). “All factual allegations of the complaint must be accepted as true,” and courts “must construe the pleading liberally and draw every fair intendment in favor of the [non-moving party].” *Vacation Village, Inc. v. Hitachi Am., Ltd.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994) (citations omitted).

II. THE STATE HAS MADE A PRIMA FACIE SHOWING THAT META IS SUBJECT TO PERSONAL JURISDICTION WITH RESPECT TO MESSENGER.

As a threshold issue, Meta argues that the Complaint should be dismissed in its entirety under NRCP 12(b)(2) for failing to establish that Meta is subject to personal jurisdiction in Nevada. The Court finds that, for purposes of assessing a motion to dismiss, the State has made a prima facie showing that Meta is subject to personal jurisdiction, and denies Meta’s Motion to Dismiss to the extent it argues that it is not subject to personal jurisdiction in Nevada.

As the United States Supreme Court has explained, the Constitution “limits a state court’s power to exercise jurisdiction over a defendant.” *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358 (2021). There are two types of personal jurisdiction: “general (sometimes called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction.” *Id.* (citing *Goodyear Dunlop Tires Ops., S. A. v. Brown*, 564 U.S. 915, 919 (2011)). “A state court may exercise general jurisdiction only when a defendant is ‘essentially at home’ in the State.” *Id.* (quoting *Goodyear*, 564 U.S. at 919). By con-

trast, specific jurisdiction “covers defendants less intimately connected with a State, but only as to a narrower class of claims.” *Id.* at 359.

The State did not contend that Meta was subject to general jurisdiction in Nevada. Therefore, the Court considers only whether Meta is subject to specific jurisdiction.

A. *Meta is subject to specific jurisdiction in Nevada.*

For this Court to properly exercise jurisdiction over Meta in this case, the State must show that Meta “purposefully avail[ed] itself of the privilege of conducting activities with the forum State” of Nevada. *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). “The contacts must be the defendant’s own choice and not ‘random, isolated, or fortuitous.’” *Id.* (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984)). “They must show that the defendant deliberately ‘reached out beyond’ its home—by, for example, ‘exploit[ing] a market’ in the forum State or entering a contractual relationship centered there.” *Id.* (quoting *Walden v. Fiore*, 571 U.S. 277, 285 (2014)).

However, even where the defendant has “deliberately reached” into the forum state, due process requires more for the exercise of personal jurisdiction: the plaintiff’s suit must “arise out of or relate to the defendant’s contacts with the forum.” *Bristol-Myers Squibb Co. v. Super. Ct. of Cal., San Francisco Cnty.*, 582 U.S. 255, 262 (2017) (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014)) (cleaned up). Put a bit differently, personal jurisdiction requires the existence of “an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation.” *Id.* (quoting *Goodyear*, 564 U.S. at 919) (cleaned up). That

is so because due process requires that parties have “notice” and “fair warning” that they will be subject to a court’s jurisdiction. *Ford Motor Co.*, 592 U.S. at 360 (cleaned up).

“Specific jurisdiction is proper only where the cause of action arises from the defendant’s contacts with the forum.” *Tricarichi*, 135 Nev. at 91 (quoting *Fulbright & Jaworski LLP v. Eighth Judicial Dist. Ct.*, 131 Nev. 30, 37, 342 P.3d 997, 1002 (2015)) (cleaned up). In assessing specific jurisdiction, Nevada courts examine two factors:

- (1) whether the defendant purposefully availed itself of the privilege of acting in the forum state or purposefully directed its conduct towards the forum state, and
- (2) whether the cause of action arose from the defendant’s purposeful contact or activities in connection with the forum state, such that it is reasonable to exercise personal jurisdiction.

Id. (citing *Dogra v. Liles*, 129 Nev. 932, 937, 314 P.3d 952, 955 (2013); *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Ct.*, 122 Nev. 509, 513, 134 P.3d 710, 712–13 (2006)).

“In analyzing whether specific personal jurisdiction exists in a tort action, courts apply the ‘effects test’ derived from *Calder v. Jones*, 465 U.S. 783 (1984), which considers whether the defendant (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.” *Id.* (quoting *Picot v. Weston*, 780 F.3d 1206, 1213–14 (9th Cir. 2015)) (cleaned up). Thus, “the plaintiff’s contacts with the defendant and the forum are not the proper focus of jurisdictional analysis.” *Id.* at 92.

Instead, “the effects inquiry and the question of minimum contacts focuses on the relationship between the defendant, the forum, and the litigation, and ‘the defendant’s suit-related conduct,’ which ‘must create a substantial connection with the forum.’” *Id.* (quoting *Walden*, 571 U.S. at 283–84). Indeed, the connection or relationship “must arise out of contacts that the defendant [itself] creates with the forum state.” *Id.* (quoting *Walden*, 571 U.S. at 284). And the analysis must turn on “the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.” *Id.* (quoting *Walden*, 571 U.S. at 285). That is, the proper question is not whether the plaintiff experienced a particular injury or effect, but whether the defendant’s conduct connects it to the forum in some meaningful way.

1. Meta has purposefully availed itself of the privilege of conducting activities with Nevada.

Here, the Court concludes that Meta has “purposefully avail[ed] itself of the privilege of conducting activities with” Nevada. *See Ford Motor Co.*, 592 U.S. at 359 (quoting *Hanson*, 357 U.S. at 253). For purposes of resolving Meta’s Motion to Dismiss the Messenger case, the Court considered the State’s complaint and proffered evidence and finds that the State has pleaded sufficient facts and met its burden to make a *prima facie* showing to demonstrate that Meta affirmatively and intentionally reached out to Nevada. Meta has exploited a market in Nevada by permitting Nevada users to download the Messenger app on phones in the State of Nevada. *See, e.g., Peccole v. Eighth Jud. Dist. Ct.*, 111 Nev. 968, 971, 899 P.2d 568, 570 (1995) (“It is not necessary for a defendant to physically enter the forum; use of the telephone can be sufficient for purposeful availment.” (cleaned up)). Meta has also entered into contractual relations with Nevada-based users

through Meta's terms of service. As alleged in the State's Complaint, numerous Nevada businesses advertise on the Messenger platform. Therefore, the Court finds that the first *Tricarichi* prong—purposeful availment—is satisfied.

2. The State's claims arise out of or relate to Meta's activities in Nevada.

Having determined that Meta, with respect to Messenger, purposefully availed itself of Nevada, the Court turns to the second *Tricarichi* prong—whether Meta's conduct arises out of or relates to the claims pleaded in the Messenger Complaint. Taking the State's allegations as true, the Court concludes that the State has made a prima facie showing that its claims arise out of or relate to Meta's activities related to Messenger in Nevada. *See, e.g.*, Messenger Compl. ¶¶ 50, 83. The Court finds, based on the State's allegations, the testimony from Meta's witnesses, the results of the jurisdictional discovery this Court previously ordered, and the Appendix incorporated into the State's Opposition, that the instant situation is more like *Calder* than *Tricarichi* because everything that has been asserted happened in Nevada and Meta's alleged conduct related to Messenger arises out of or relates to its contacts with Nevada. *Compare Calder*, 465 U.S. at 788–89, *with Tricarichi*, 135 Nev. at 94–95.

3. Exercising personal jurisdiction over Meta in Nevada in this case is reasonable and would not offend traditional notions of fair play and substantial justice.

Even though the Court has determined that Meta purposefully availed itself of Nevada, and that the State's claims arise out of or relate to Meta's contacts with Nevada, the Court's analysis is not complete. The Fourteenth Amendment requires that the exercise of personal

jurisdiction be “reasonable,” *Trump*, 109 Nev. at 699 (quoting *Judas Priest v. Second Jud. Dist. Ct.*, 104 Nev. 424, 426, 760 P.2d 137, 138 (1988)), and not “offend traditional notions of fair play and substantial justice,” *id.* at 698 (quoting *Mizner v. Mizner*, 84 Nev. 268, 270, 439 P.2d 679, 680 (1968)) (cleaned up).

Meta bears the burden of making “a compelling case that the exercise of jurisdiction over [it] would be unreasonable” despite Meta having sufficient minimum contacts with Nevada. *See id.* at 703. The Court concludes that Meta has not met this burden.

Accordingly, the Court holds that Meta is subject to personal jurisdiction with respect to Messenger pursuant to N.R.S. § 14.065 and the authorities cited in this Order. The Court therefore **DENIES** Meta’s Motion to Dismiss under NRCP 12(b)(2).

III. SECTION 230 OF THE COMMUNICATIONS DECENTY ACT DOES NOT BAR THE STATE’S CLAIMS.

Meta moves to dismiss all claims, arguing that Section 230 of the federal Communications Decency Act, 47 U.S.C. § 230, immunizes it from the State’s claims because they would impermissibly impose liability on Meta for deciding how and what third-party content to publish on Messenger, failing to warn of the same, and profiting from such publication.

The State opposes Meta’s argument for dismissal based on the narrow immunity provided in Section 230 because the State seeks to hold Meta liable for its own design features and its own alleged deceptive conduct, and expressly disavows any liability based on third-party content. The State argues that the immunity provided by Section 230(c)(1) does not apply to Meta in the instant

case because that statute only protects “Good Samaritans” in narrowly drawn circumstances that are not present here. According to the State, to comply with the duties alleged in the Complaint, Meta would not need to alter third-party content or otherwise engage in publication activities, it would need to change only its own alleged misstatements, marketing, product development, and design decisions. The State further argues that Section 230(e)(3) similarly does not protect Meta because a stated policy goal of the Communications Decency Act is “to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services.” 47 U.S.C. §230(b)(3). Thus, the State contends that holding Meta liable for its design of Messenger would be consonant with, not inconsistent with Section 230(c) and Congress’ intent expressed in enacting Section 230.

The Court concludes that Section 230 does not provide immunity that bars the State’s claims at the motion to dismiss stage. Section 230 provides that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” *Id.* § 230(c)(1). It also provides that “[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.” *Id.* § 230(e)(3). The Court sees *Lemmon v. Snap, Inc.*, 995 F.3d 1085 (9th Cir. 2021), as instructive. Like the claims in *Lemmon*, the Court determines that the State’s claims here do not concern Meta’s publishing activities and would not impose liability related to third-party content. Instead, the claims concern the design of Messenger and, therefore, are not subject to Section 230 immunity based on the allegations.

IV. THE FIRST AMENDMENT DOES NOT BAR THE STATE'S CLAIMS.

Meta moves to dismiss all claims, arguing that the First Amendment bars the State's claims because (1) they seek to regulate Meta's protected editorial discretion in disseminating information generated by third parties and (2) Meta's statement for which the State seeks to impose liability are protected statements of opinion. Meta contends that the First Amendment protects Meta's decisions about "which third party content" will be displayed on its services or "how the display will be ordered and organized." *Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2402, 2406 (2024). And Meta argues that the First Amendment generally protects statements of opinion, *see, e.g., Partington v. Bugliosi*, 56 F.3d 1147, 1160 (9th Cir. 1995), and against claims based on alleged failures to warn of the alleged harms of protected speech, *see, e.g., Bill v. Superior Court*, 137 Cal. App. 3d 1002 (1982).

The State opposes Meta's argument for dismissal based on the First Amendment because the State's claims do not implicate Meta's right to free expression under the First Amendment. The State's claims do not seek to hold Meta liable for the third-party content displayed on Messenger. Under the State's view, that Meta publishes content on Messenger does not provide it a constitutional sanctuary from which to allegedly violate the consumer protection laws of the state of Nevada, especially where the State's claims do not seek to hold Meta liable for the content available on its platforms. The State argues that *Moody v. NetChoice, LLC* has no impact on the First Amendment questions advanced by Meta here. Despite being resolved on purely procedural matters, the Supreme Court's guidance regarding errors in *Moody* has no bearing here according to the State because the State does not attempt to moderate the content displayed on

Messenger. Further, the State is not pursuing its claims against Meta for opinions, the State is pursuing its claims against Meta for alleged false factual misrepresentations and intentional omissions Meta knowingly made. The State also does not assert that Meta had a duty to warn regarding the substance of the third-party content it displays.

The Court finds that the First Amendment does not bar the State's claims at the motion to dismiss stage. The First Amendment (incorporated against the states by the Fourteenth Amendment) provides that the government cannot "abridg[e] the freedom of speech." U.S. Const. Amend. I. The Court determines that the State's claims do not appear to regulate Meta's speech or publishing activities. According to the Complaint, the State's claims concern Meta's alleged conduct and they do not concern third-party content. The Court is required, at the motion to dismiss stage, to accept those allegations as they are pleaded.

V. THE COURT DISMISSES THE NEVADA DECEPTIVE TRADE PRACTICES ACT CLAIMS (COUNTS I AND II) WITH LEAVE TO AMEND.

Meta argues that the Nevada Deceptive Trade Practices Act ("NDTPA") claims fail to state a claim because (1) the statute exempts publishers engaged in the dissemination of information; (2) the statute only applies to "goods or services for sale or lease," which Messenger is not; (3) the claims of deceptive practices fail to meet Rule 9(b)'s particularity standard; and (4) the challenged statements are not actionable.

The State opposes Meta's argument that the State failed to state a claim under the NDTPA because (1) the exemption Meta relies on is inapplicable as the State is seeking to hold Meta liable for its own conduct (including

its own use of addictive design features and its own material misrepresentations and omissions); (2) the statute applies to Meta, especially since it extends to knowingly false representations made in a transaction; (3) Rule 9(b) does not apply to the State's NDTPA claims, but even if it did the State has identified Meta's misrepresentations with sufficient particularity; and (4) Meta's misrepresentations are actionable statements of fact.

The Court holds that the State has not adequately alleged how the transactions at issue here are "goods or services for sale or lease," as required by N.R.S. § 598.0915 or that there should be an extension of the current case law regarding N.R.S. § 598.0915. The State is granted leave to amend to attempt to adequately allege these claims.

The Court dismisses these claims with leave to amend on this basis and defers ruling on Meta's other arguments for dismissal at this juncture.

VI. THE COURT DISMISSES THE PRODUCT LIABILITY CLAIMS (COUNTS III AND IV) WITH LEAVE TO AMEND.

Meta argues that Counts III and IV fail to state a claim because (1) Messenger does not qualify as a "product" for purposes of Nevada product liability law and (2) the Complaint fails to adequately allege that Messenger proximately caused the alleged injuries.

The State opposes Meta's argument for dismissal because (1) social media platforms, like Messenger, are products; (2) Meta's own Rule 30(b)(6) designee repeatedly referred to Messenger as a product; and (3) even though proximate cause is an issue of fact for a jury to resolve rather than to be considered in a motion to dismiss,

the State has adequately alleged that Meta proximately caused the alleged injuries.

The Court holds that the State has not adequately alleged that Messenger is a “product” for purposes of Nevada product liability law or that a reasonable extension of Nevada product liability law should include Messenger. To state a product liability claim under Nevada law, a plaintiff must allege injuries caused by a “product.” *See, e.g., Schueler v. Ad Art, Inc.*, 136 Nev. 447, 452, 472 P.3d 686, 691 (Nev. App. 2020). “The determination of whether something constitutes a product for purposes of [a product liability claim]” is a question for the Court, and should be conducted on a case-by-case basis. *Id.* Nevada courts “*must* apply section 402A of the Second Restatement [of Torts], including the public policy objectives of the doctrine, as well as the relevant precedents interpreting section 402A.” *Id.* at 455 (emphasis in original). Courts are also permitted to use appropriate definitions as guidance when determining whether something is a “product,” including the definition found in the Restatement (Third) of Torts. *Id.* The Complaint does not adequately allege that Messenger is a product under existing law or under an appropriate extension of existing law. The State is granted leave to amend to attempt to adequately allege these claims.

VII. THE COURT DENIES THE MOTION TO DISMISS THE NEGLIGENCE CLAIM (COUNT V).

Meta argues that Count V fails to state a claim for negligence because the State has failed to allege (1) a cognizable legal duty underlying the claim and (2) that Meta proximately caused any of the alleged injuries. The Court holds that the negligence claim is adequately pleaded.

The State opposes Meta’s arguments for dismissal.

The Court concludes that the question on a motion to dismiss under NRCP 12(b)(5) is whether a complaint puts the defendant on notice of the allegedly violated duty. Here, the Complaint puts Meta on notice of the duty the State alleges. Whether that alleged duty is legally sufficient or recognized under the law is a question that will be addressed at later stages of the litigation.

On the proximate cause element, the Court concludes that whether Meta proximately caused the injuries is a question of fact that cannot be resolved at the motion to dismiss stage. The State has adequately pleaded that Meta proximately caused the alleged injuries.

VIII. THE COURT DISMISSES THE UNJUST ENRICHMENT CLAIM (COUNT VI) WITH LEAVE TO AMEND.

The Court dismisses the unjust enrichment claim with leave to amend. The Complaint does not adequately plead how Meta was unjustly enriched at the State's expense, as opposed to why Meta was allegedly unjustly enriched at others' expense.

IX. CONCLUSION

For the reasons stated herein, Meta's Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART**. Counts I, II, III, IV, and VI are **DISMISSED** with leave to amend. The State shall file an Amended Complaint, if any, within fourteen (14) days of the Notice of Entry of this Order.

Dated this 6th day of November, 2024

368 100 8E05 8242
Joanna S. Kushner
District Court Judge

APPENDIX E

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA, Plaintiff, vs. META PLATFORMS, INC. f/k/a FACEBOOK, INC.; INSTAGRAM, LLC, Defend- ants.	Case No.: A-24-886120-B Dept. No.: 15 COMPLAINT AND DEMAND FOR JURY TRIAL Exempt from Arbitration: Business Court Matter Declaratory Relief Sought Amount In Controversy Greater than \$50,000 Business Court Requested: EDCR 1.61 – Enhanced Case Manage- ment
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Plaintiff, the State of Nevada, by and through Aaron D. Ford, Attorney General, and the undersigned attorneys (the “State”) brings this Complaint against Defendants Meta Platforms, Inc. f/k/a Facebook, Inc. (“Meta”)

and its social media platform Instagram,¹ owned and operated by Instagram, LLC (“Instagram”) (collectively, Meta and Instagram are referred to herein as “Defendants”), and alleges, upon information and belief, as follows:

INTRODUCTION

1. The State of Nevada, by and through Aaron D. Ford, Attorney General for the State of Nevada, and Ernest Figueroa, Consumer Advocate, files this Complaint on behalf of the State to eliminate the hazard to public health and safety caused by Defendants’ social media platform Instagram, and to recover civil penalties and other relief arising out of Defendants’ false, deceptive, and unfair marketing and other unlawful conduct arising from the design and implementation of Instagram.

2. Meta (formerly Facebook, Inc.) is the parent company of some of the world’s largest social media platforms, including the wildly popular platform Instagram. Worldwide, users number 2.4 billion, meaning that approximately one quarter of the world’s population utilizes this platform every month.² Because of its scale, Instagram is also wildly remunerative, with Defendants generating billions of dollars in revenue from facilitating targeted advertising.

¹ In general, the term “social media platform” refers to a website and/or app (often operating in conjunction, under the same name) that allows people to create, share, and exchange content (such as posts of text, photos, videos, etc.) with other users of the platform. Examples of popular social media platforms include Facebook, Instagram, Messenger, Snapchat, and TikTok.

² <https://www.sec.gov/Archives/edgar/data/1326801/000132680122000018/fb-20211231.htm> (last visited Jan. 27, 2024).

3. However, this revenue is only available as long as there is an audience on Instagram to view those highly-targeted advertisements. Thus, Meta is incentivized to keep as many of its users on the platform for as long as possible. But Meta has crossed a line from simply enticing its audience to taking steps to keep its audience *addicted* to the platform. Highly-skilled and highly-paid employees have invested years of research and analysis into designing and deploying features on Instagram that make it impossible not just to quit using the app, but simply to put our phones down to attend to the most basic functions of our daily lives. It demands our attention first thing in the morning and last thing at night, at the dinner table, while we're walking down the street, even when we are driving.

4. This addiction to social media—and its consequences—is increasingly being called out by stakeholders and advocates. One of the most succinct critiques can be found in the documentary film, *The Social Dilemma*, which addresses our addiction to posts, likes, pokes, chats, and all of the other prompts that Big Tech³ has deployed to keep us addicted to their apps. As an interviewee in the film notes: ***“There are only two industries that call their customers ‘users’: illegal drugs and software.”***⁴

³ “Big Tech” is a term commonly used to describe the largest global technology corporations—most typically, this group includes Meta, Alphabet (Google), Amazon, Apple, and Microsoft. However, more broadly, the term refers to the amalgam of large technology companies that create and maintain technologies and platforms that are intertwined with our daily lives.

⁴ *The Social Dilemma*. Directed by Jeff Orlowski-Yang; Produced by Exposure Labs, Argent Pictures, The Space Program; 2020. *Netflix*, <https://www.netflix.com/watch/81254224> (last visited Jan. 27, 2024).

5. And, much like an illegal drug, Instagram has been designed to be an addiction machine, targeting people under the age of 18 (“Young Users”) and more insidiously children under the age of 13 (“Youngest Users”) who, as Meta well knows, have developmentally limited capacity for self-control. Children are the most vulnerable to these intentionally addictive design elements. As one specialist in social media addiction notes, “[a]dolescence is second only to infancy when it comes to growth. Therefore, the impact of social media on a developing teen’s mind and body can be huge.”⁵ Social media platforms like Instagram, with design elements that intentionally keep children engaged for as long as possible—to the exclusion of all other activities—harm their users emotionally, developmentally, and physically. They lead to a condition known as “problematic internet use,”⁶ which is associated with a range of harms, including but not limited to exposure to predators and online bullies, age-inappropriate content, damage to children’s self-esteem, and increased risk of eating disorders and even suicide.

6. As the U.S. Surgeon General recently explained, children’s and parents’ attempts to resist social media is an unfair fight: “You have some of the best designers and product developers in the world who have designed these products to make sure people are maximizing the amount of time they spend on these platforms. And if we tell a child, use the force of your willpower to control how much

⁵ <https://www.newportacademy.com/resources/mental-health/teens-social-media-addiction/> (last visited Jan. 27, 2024).

⁶ Wen Li, et al., *Diagnostic Criteria for Problematic Internet Use among U.S. University Students: A Mixed-Methods Evaluation*, PLOS ONE (Jan. 11, 2016), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0145981> (last visited Jan. 27, 2024).

time you're spending, you're pitting a child against the world's greatest product designers.”⁷

7. Unlike other consumer products that have appealed to children for generations—like candy or soda—with social media platforms there is no natural break point where the consumer has finished the unit of consumption. Instead, social media platforms are a bottomless pit where users can spend an infinite amount of their time. And Meta profits from each additional second a user spends on its platforms.

8. Meta has designed Instagram to exploit that dynamic by embedding within the platform an array of design features that maximize youth engagement, peppering them with reminders to “log on” and making it psychologically difficult to “log off.” Specifically, Defendants rely on design elements to make Instagram addictive to all users, and to Young Users in particular (“Design Elements”). These Design Elements—Low-Friction Variable Rewards; Social Manipulation; Ephemeral Content; Push Notifications; and Harmful Filters (each defined below)—each serve as an obstacle to Young User’s free decision-making.

9. Instagram’s design and platform features have fueled the explosive increase in the amount of time that Young Users spend on these platforms. As Meta’s internal data confirms—and as anyone who has recently spent time with adolescents can attest—Meta has successfully induced Young Users to spend vast amounts of time on its social media platforms. Indeed, for many Young Users,

⁷ Allison Gordon & Pamela Brown, *Surgeon General says 13 is ‘too early’ to join social media*, CNN (Jan. 29, 2023), <https://www.cnn.com/2023/01/29/health/surgeon-general-social-media/index.html> (last visited Jan. 27, 2024).

social media platforms are viewed as an indispensable part of their identity, a forum to share a carefully cultivated personality “highlight reel,” and a place where they must constantly be “present”—whether they want to be or not.

10. All the while, Meta understands that Young Users’ time spent on its social media platforms is not the product of free choice. As Meta’s internal studies repeatedly demonstrate—and as a growing chorus of independent researchers have confirmed—Young Users feel addicted to these platforms. They widely report difficulty controlling their time spent on the applications (also referred to as “app” or “apps”). And they frequently express that they would prefer to spend meaningfully less time on social media platforms but feel powerless to do so. Still, Meta has not introduced any product changes to meaningfully reduce its platforms’ addictiveness.

11. The widespread compulsive use that Meta induced—and allowed to continue unabated—has come at a massive societal cost. In effect, Meta is conducting a potentially society-altering experiment on a generation of Young Users’ developing brains.⁸ While this experiment’s

⁸ At least one recent study involving children’s use of Facebook, Instagram, and Snapchat “suggests that social media behaviors in early adolescence may be associated with changes in adolescents’ neural development, specifically neural sensitivity to potential social feedback.” Maria T. Maza, Kara A. Fox, Seh-Joo Kwon, et al., Association of Habitual Checking Behaviors on Social Media With Longitudinal Functional Brain Development, *JAMA Pediatr.* (Jan. 3, 2023), <https://jamanetwork.com/journals/jamapediatrics/article-abstract/2799812> (last visited Jan. 27, 2024). These changes in adolescents’ neural development may permanently alter their brains with unknown long-term impacts. *Id.*

full impact may not be realized for decades, the early returns are alarming.

12. Researchers warn that compulsive use of social media platforms impose a wide range of harms, including increased levels of depression, anxiety, and attention deficit disorders; altered psychological and neurological development; and reduced sleep, to name a few. And that is to say nothing of the immense opportunity cost imposed when youth spend critical years glued to social media platforms, not engaged in the varied and profound experiences associated with growing up in the physical world.

13. In short, Meta's business strategy that purposefully addicts Young Users to its social media platforms has caused widespread and significant injury to Nevadans, and young Nevadans in particular.

14. Meta also deceived and continues to deceive Nevada consumers—and, critically, parents—on a large scale. Here, Meta misled consumers, parents, and guardians by concealing the various and significant risks social media platforms present to its users, particularly Young Users. Meta further made multiple, affirmative misrepresentations and engaged in material omissions regarding the safety of its platforms, to the detriment of Nevadans.

15. First, Meta has long known that Instagram was harmful for users, and especially ruinous for young women. But Meta did not share that materially important information with consumers using their products. Instead, Meta's leadership—including founder and Chief Executive Officer Mark Zuckerberg—repeatedly declined employees' requests to fund measures that would reduce Instagram's known harms. And rather than make its knowledge public, Meta limited internal access to incriminating findings to mitigate the risk that information would be leaked to consumers, parents, and policymakers.

16. In one particularly distressing episode, Zuckerberg personally intervened to lift a ban on “selfie” filters that mimicked plastic surgery effects, even though Meta’s retained experts overwhelmingly found that those filters had devastating effects on young women. Zuckerberg did this over the strong recommendation of employees and other executives. Meta never disclosed the harmful effects of this platform feature.

17. Second, Meta publicizes its “Community Standards Enforcement Reports,” or CSER, to create the façade that its social media platforms are a safe platform where harmful content was rarely encountered. Specifically, these reports touted the low “prevalence” of Community Standards violations, which the Company used as evidence that its platforms are safe. But that is a false narrative that misleads consumers about the true extent of harmful experiences on Instagram.

18. To illustrate, in the third quarter 2021 Community Standards Enforcement Report, Meta showcased the low “prevalence” of violating content, estimating for example that “between 0.05% to 0.06% of views were of content that violated our standards against bullying & harassment [on Instagram].” That creates the impression that bullying and harassing content is extremely rare on Instagram—5 or 6 in 10,000 pieces of content.

19. In reality, bullying and harassing content is rampant on Instagram—most of it just does not violate Meta’s Community Standards (which reasonable consumers, parents, and guardians would have no reason to know). Meta’s unpublished internal surveys show that the incidence of bullying and harassing content is staggering, particularly among Young Users. According to Meta’s robust internal survey taken during roughly the same time

period, users reported that within the last seven days on Instagram:

- 28.3% of all users witnessed bullying;
- 48.7% of users 13-15-year-olds witnessed bullying;
- 50% of users 16-17-year-olds witnessed bullying;
- 8.1% of all users were the target of bullying;
- 21.8% of users 13-15-year-olds were the target of bullying;
- 11.9% of all users received unwanted advances;
- 24.4% of users 13-15-year-olds received unwanted advances; and,
- 25.4% of users 16-17-year-olds received unwanted advances.

20. While reasonable consumers could not have understood the difference between Meta's reported "prevalence" metrics and the actual incidence of harm on Instagram, Meta's leadership certainly did. In an email, Meta's former Director of Integrity raised alarms about this issue to Zuckerberg, former Chief Operating Officer Sheryl Sandberg, and Instagram Head Adam Mosseri. Meta's leadership ignored that email and continues to issue misleading reports to this day.

21. The State obtained testimony from the former Director of Integrity during its investigation. When asked if he believed "that Mr. Zuckerberg and other Company leaders focused on the 'prevalence' metric because it created a distorted picture about the safety of Meta's platforms," he testified "I do."⁹ When asked if he thought "Mr. Zuckerberg's public statements about prevalence

⁹ Arturo Bejar Deposition (May 16, 2023).

created a misleading picture of the harmfulness of Meta's platforms," he testified "I do." And when asked if he was aware of any instances where the Company, in his view, minimized or downplayed the harms users were experiencing on Meta's platforms, he testified:

Every time that a Company spokesperson in the context of harms quotes prevalence statistics I believe that is what they are doing, that they're minimizing the harms that people are experiencing in the product.

22. Third, Meta misled the public through false, affirmative statements about its commitment to well-being related products and features. As one example, it long touted its "Time Spent" tools as a way for users (and parents) to manage engagement on Meta's platforms and as a demonstration of Meta's commitment to well-being. But when Meta learned that its "Time Spent" tools delivered inaccurate data to consumers, Meta refused to sunset those tools—preferring to mislead its users (and parents) than suffer a public-relations hit for rolling back or fixing a purported "wellness" feature.

23. Fourth, Meta made material misrepresentations to develop trust among consumers, parents, and guardians that its social media platforms are a safe place for Young Users. In various public channels, Meta deceptively represented (1) that it does not prioritize increasing users' time on its platforms; (2) that it protects Young Users from harmful or inappropriate content on its platforms; (3) that it does not place a monetary value on Young Users' use of Meta platforms; (4) that it has not changed its internal data and research access policies in response to The Wall Street Journal's 2021 coverage of its internal research findings; and (5) that its platforms are not addictive.

24. In sum, through its acts, omissions, and statements, Meta carefully created the impression that its social media platforms were and *are still* a safe platform where users were unlikely to experience significant harm and where users' mental health was an important Company priority. That representation was material, false, and misleading.

25. Based on this misconduct, and as more fully described below, Nevada brings this action pursuant to the Nevada Deceptive Trade Practices Act, N.R.S. §§ 598.0903 through 598.0999 ("NDTPA"), and further brings claims of negligence, products liability, and unjust enrichment.

26. The State brings this action exclusively under the laws of the State of Nevada. No federal claims are being asserted, and to the extent that any claim or factual assertion set forth herein may be construed to have stated any claim for relief arising under federal law, such claim is expressly and undeniably disavowed and disclaimed by the State.

27. Nor does the State bring this action on behalf of a class or any group of persons that can be construed as a class. The claims asserted herein are brought solely by the State and are wholly independent of any claims that individual Nevadans may have against Defendants. The Attorney General is authorized to bring an action—independently in the name of the State as well as in a *parens patriae* capacity on behalf of the persons residing in Nevada—to remedy violations of Nevada law.

PARTIES

28. The State of Nevada is a body politic created by the Constitution and laws of the State; as such, it is not a citizen of any state. This action is brought by the State in

its sovereign capacity in order to protect the interests of the State of Nevada and its residents and as *parens patriae*, by and through Aaron D. Ford, the Attorney General of the State of Nevada. Attorney General Ford is acting pursuant to his authority under, *inter alia*, NRS 228.310, 338.380, 228.390, and 598.0963(3).

29. Meta Platforms, Inc. (“Meta”) is a Delaware corporation with a principal place of business in Menlo Park, California. From 2005 until October 28, 2021, Meta was known as Facebook, Inc. Meta is a multinational technology company that designs, distributes, and promotes multiple social media platforms, including Instagram.

30. Instagram, LLC (“Instagram”), is a Delaware corporation with a principal place of business in Menlo Park, California. Instagram is a subsidiary of Meta that is wholly owned and controlled by its parent. To the extent the allegations in this complaint against Meta relate to the Instagram product specifically, Plaintiff realleges them in full against Instagram LLC as well.

31. All of the allegations described in this Complaint were part of, and in furtherance of, the unlawful conduct alleged herein, and were authorized, ordered and/or done by Defendants’ officers, agents, employees, or other representatives while actively engaged in the management of Defendants’ affairs within the course and scope of their duties and employment, and/or with Defendants’ actual, apparent and/or ostensible authority.

JURISDICTION AND VENUE

32. Subject matter jurisdiction for this case is conferred upon this Court pursuant to, *inter alia*, Article 6, Section 6 of the Nevada Constitution.

33. This Court has personal jurisdiction over Defendants because Defendants do business in Nevada

and/or have the requisite minimum contacts with Nevada necessary to constitutionally permit the Court to exercise jurisdiction with such jurisdiction also within the contemplation of the Nevada “long arm” statute, NRS § 14.065. More specifically, and set forth in greater detail, *infra*, Meta enriches itself by selling advertisements targeted to Nevada. According to Meta’s public advertising library, Meta regularly sells advertisements specific to Nevada, and it allows businesses to target specific cities in Nevada.¹⁰ All manner of Nevada entities advertise on Instagram to reach a Nevada audience and expand their business in Nevada.

34. The instant Complaint does not confer diversity jurisdiction upon the federal courts pursuant to 28 USC 1332, as the State is not a citizen of any state and this action is not subject to the jurisdiction of the Class Action Fairness Act of 2005.¹¹ Likewise, federal question subject matter jurisdiction pursuant to 28 USC § 1331 is not invoked by the Complaint, as it sets forth herein exclusively viable state law claims against Defendants. Nowhere herein does Plaintiff plead, expressly or implicitly, any cause of action or request any remedy that arises under federal law. The issues presented in the allegations of this Complaint do not implicate any substantial federal issues and do not turn on the necessary interpretation of federal law. No federal issue is important to the federal system as a whole under the criteria set by the Supreme

¹⁰ <https://www.facebook.com/business/help/1501907550136620> (last visited Jan. 27, 2024).

¹¹ See, e.g., *Postal Tel Cable Co. v. Alabama*, 155 U.S. 482, 487, 15 S.Ct. 192, 194, 39 L.Ed. 231 (1894) (“A State is not a citizen. And, under the Judiciary Acts of the United States, it is well settled that a suit between a State and a citizen or a corporation of another State is not between citizens of different States . . .”).

Court in *Gunn v. Minton*, 568 U.S. 251 (2013) (*e.g.*, federal tax collection seizures, federal government bonds). Specifically, the causes of action asserted, and the remedies sought herein, are founded upon the positive statutory, common, and decisional laws of Nevada. Further, the assertion of federal jurisdiction over the claims made herein would improperly disturb the congressionally approved balance of federal and state responsibilities. Accordingly, any exercise of federal jurisdiction is without basis in law or fact.

35. In this Complaint, to the extent Plaintiff cites federal statutes and regulations. Plaintiff does so to state the duty owed under Nevada law, not to allege an independent federal cause of action and not to allege any substantial federal question under *Gunn v. Minton*. “A claim for negligence in Nevada requires that the plaintiff satisfy four elements: (1) an existing duty of care, (2) breach, (3) legal causation, and (4) damages.” *Turner v. Mandalay Sports Entertainment, LLC*, 124 Nev. 213, 180 P.3d 1172 (2008). The element of duty is to be determined as a matter of law based on foreseeability of the injury. *Estate of Smith ex rel. Smith v. Mahoney’s Silver Nugget, Inc.*, 127 Nev. 855, 265 P.3d 688, 689 (2011).

36. To be clear, to the extent Plaintiff cites federal statutes and federal regulations, it is for the sole purpose of stating the duty owed under Nevada law to the residents of Nevada. Thus, any attempted removal of this complaint based on a federal cause of action or substantial federal question is without merit.

37. Venue is proper in this Court pursuant to NRS § 598.0989(3) because Defendants’ conduct alleged herein took place in Clark County, Nevada.

FACTS

I. INSTAGRAM, GENERALLY.

38. Instagram is a photo-, video-, and text-sharing social networking service. Users engage with it either via its website or its free-standing app, which users download to their smartphone or other mobile device. Instagram allows users to post content that can be edited (including with filters for visual posts like photo and video) and organized by hashtags and geographical tagging. Users can browse other users' posts by tag or location, view trending content, like posts, and follow other users to add their content to a personal feed.



Fig. 1¹²

39. As noted above, Instagram attracts billions of monthly active users worldwide, and roughly 160 million

¹² Jon Fingas, *Instagram is making its TikTok-like 'Reels' easier to find*, Engadget (June 24, 2020), <https://www.engadget.com/instagram-reels-expansion-000141339.html> (last visited Jan. 27, 2024).

users in the United States.¹³ In 2021, 57% of surveyed American children ages 12-17 said they used Instagram every week,¹⁴ while 62% of teens ages 13-17 reported using Instagram, with 10% of teens reporting almost constant use.¹⁵

40. Instagram is a critical social media platform for young people. It has been described by the Wall Street Journal as “the online equivalent of the high-school cafeteria: a place for teens to post their best photos, find friends, size each other up, brag and bully.”¹⁶

41. A slide from a 2017 internal presentation at Meta states “Instagram is for teens,” describes the perceived user base as primarily middle schoolers and high-schoolers and includes quotes from 11- and 12-year-olds saying that people their age use Instagram.

¹³ <https://www.sec.gov/Archives/edgar/data/1326801/000132680122000018/fb-20211231.htm> (last visited Jan. 27, 2024).

¹⁴ <https://www.statista.com/statistics/578364/countries-with-most-instagram-users/> (last visited Jan. 27, 2024).

¹⁵ Salvador Rodriguez, *TikTok usage surpassed Instagram this year among kids aged 12 to 17, Forrester survey says*, CNBC (Nov. 18, 2021, 5:51 PM EST), <https://www.cnbc.com/2021/11/18/tiktok-usage-topped-instagram-in-2021-among-kids-12-to-17-forrester.html#:~:text=This%20year%2C%2063%25%20of%20Americans,survey%20the%20research%20firm%20conducted> (last visited Jan. 27, 2024).

¹⁶ <https://www.wsj.com/articles/facebook-knows-instagram-is-toxic-for-teen-girls-company-documents-show-11631620739> (last visited Jan. 27, 2024).

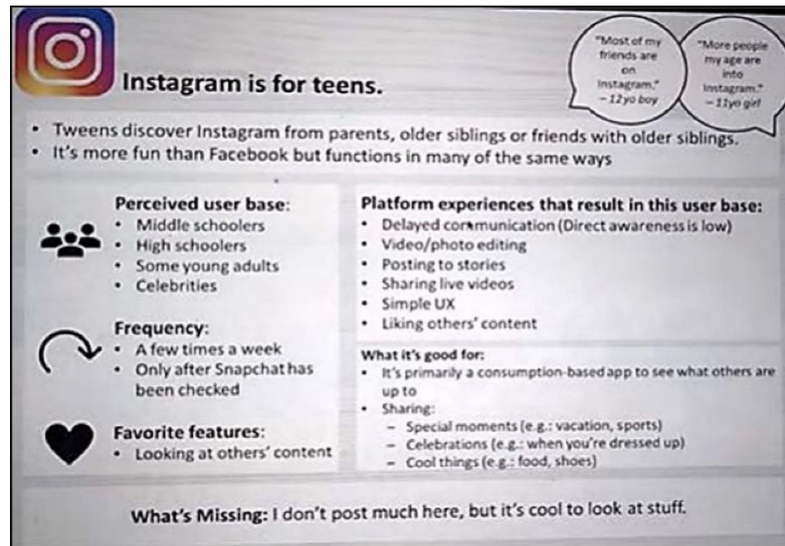


Fig. 2 - A 2017 internal presentation at Meta indicates that the company thinks of Instagram as a product for tweens and teens

A. Meta Offers Its Platforms in Exchange for Consumers' Valuable Consideration that Enables Meta to Sell Advertising.

42. Like all social media platforms, Instagram does not charge money from its users for access. Instead, it monitors its users and surreptitiously collects data related to their online lives—including the way in which they use the product, the posts with which they interact, the friends they have, the places they go, the advertisements they view, and even what users do on other sites or apps. Defendants are consistently the target of regulatory actions, lawsuits, and news reports related to the vast troves of personal data they acquire on individuals, which they use (and misuse) to create detailed, individual profiles that in turn are employed to serve users targeted advertising.

43. As Zuckerberg has explained, “based on what pages people like, what they click on, and other signals, we create categories . . . and then charge advertisers to show ads to that category. Although advertising to specific groups existed well before the internet, online advertising allows much more precise targeting and therefore more-relevant ads.”¹⁷

44. The practical effect of this arrangement—free access to the Instagram platform in exchange for personal data—is best expressed in the documentary *The Social Dilemma*, which quotes Google’s former design ethicist, Tristan Harris: “*if you’re not paying for the product, then you are the product.*”¹⁸

45. Because Meta views its users as its product, and because it can best monetize and collect information about its users while they are on its various platforms (including Instagram), Meta is incentivized to keep its users on the platforms as long as possible, and as often as possible. Via his current project, The Center for Humane Technology, Tristan Harris further explains this concept:

Our attention is a limited resource. There are only so many waking hours in the day, and therefore only so many things we can focus on. When we pay attention to one

¹⁷ Understanding Facebook’s Business Model, Mark Zuckerberg, January 24, 2019, <https://about.fb.com/news/2019/01/understanding-facebook-business-model/> (last visited Jan. 27, 2024).

¹⁸ Abigail McCormick, *Review: The Social Dilemma* (Aug. 8, 2021), <https://sauconpanther.org/2535/arts-and-entertainment/if-youre-not-paying-for-the-product-then-you-are-the-product/> (last visited Jan. 27, 2024).

thing, we're not paying attention to something else.

This fact of life has been deeply complicated by technology. With more information and more choices at our fingertips than ever before, there are unprecedented demands on our attention.

This feeling of constant distraction is fueled by tech companies that rely on capturing your attention to make money, normally by selling it to advertisers.

...

Each app is caught in a race for your attention, competing not just against other apps, but also against your friends, your family, your hobbies, and even your sleep.

...

*[S]ocial media companies don't sell software, they sell influence. They collect in-depth data about how to influence your decisions, then sell that influence to the highest bidder. The more time they can get you to spend scrolling and clicking, the more data they can collect and the more ads they can sell.*¹⁹

¹⁹ Center for Humane Technology, *The Attention Economy – Why do tech companies fight for our attention?* (Aug. 17, 2021), <https://www.humanetech.com/youth/the-attention-economy> (last visited Jan. 27, 2024).

46. Defendants acknowledge this fact in their most recent Form 10-K, warning that decreased use of the Facebook platform—resulting in fewer opportunities to profile users and serve targeted advertising—is fatal to its business model: “The size of our user base and our users’ level of engagement across our products are critical to our success. Our financial performance has been and will continue to be significantly determined by our success in adding, retaining, and engaging active users of our products that deliver ad impressions, particularly for...Instagram”²⁰ Further, Defendants acknowledge that “advertising revenue can also be adversely affected by,” *inter alia*, “decreases in user engagement, including time spent on our products” and “our inability to continue to increase user access to and engagement with our products.”²¹

47. Competition for users’ attention is fierce, and social media platforms—like Defendants’—are purposely designed to addict their users. Defendants have both in-house and external research initiatives designed to document and improve engagement reporting and have projects that use neuromarketing and virtual reality techniques to measure effectiveness.²² The mobilization of all these resources indicates that Instagram platforms is

²⁰ <https://www.sec.gov/Archives/edgar/data/1326801/000132680122000018/fb-20211231.htm> (last visited Jan. 27, 2024).

²¹ *Id.*

²² See, e.g., Meta Careers, *Shape the Future of Marketing with the Marketing Science Team*, Meta (Sept. 19, 2018), <https://www.meta-careers.com/life/come-build-with-the-facebook-marketing-science-team/> (last visited Jan. 27, 2024); *How Virtual Reality Facilitates Social Connection*, Meta, <https://www.facebook.com/business/news/insights/how-virtual-reality-facilitates-social-connection> (last visited Jan. 27, 2024).

built not for user experience, but for maximization of profit.

48. And this maximization of profit is achieved through addiction. As set forth below, Defendants employ sophisticated principles first identified by psychologists and other academics, which they manifest through intentional design elements that exploit those psychological principles.

49. These design elements are not subjective—instead they are part and parcel of Instagram’s code. They operate consistently, and universally, across the platform, for all users, including the vulnerable children who Defendants know—to a certainty—are using Instagram.

50. Worse still, Defendants’ own internal research has proven that fostering addiction to Instagram is harmful for its adolescent user base. Yet Meta conceals this information from its users and continues to add features to keep children hooked.

B. Account Creation for Instagram.

51. To fully access Instagram, consumers must create an account. As part of the account-creation process, consumers enter into a contract with Meta. By entering into these contracts, users agree to comply with Instagram’s Terms of Use.²³

52. As noted above, although users can establish accounts on Instagram without paying a fee, Defendants do not provide their products for free—rather, they charge users by collecting their data and time, which Meta then converts into advertising dollars.

²³ Facebook Terms of Service, <https://www.facebook.com/legal/terms> (last visited Jan. 27, 2024).

53. In exchange for the right to use Instagram, consumers agree to a host of terms that power Meta’s advertising business. For example, this is confirmed by Instagram’s Terms of Use:

We agree to provide you with the Instagram Service. . . . Instead of paying to use Instagram, by using the Service covered by these Terms, you acknowledge that we can show you ads that businesses and organizations pay us to promote on and off the Meta Company Products. We use your personal data, such as information about your activity and interests, to show you ads that are more relevant to you.²⁴

54. Consumers also pay for Instagram by agreeing to give Meta access to vast reams of data arising out of their platform use. Under Instagram’s Terms, consumers “must agree to [Meta’s] Privacy Policy to use Instagram.” And pursuant to that Policy, each consumer must agree that Meta may collect a host of data, ranging from information about the consumer’s activity on Instagram (such as the content they like and accounts they follow); the messages the consumer sends and receives; the content the consumer provides through Instagram’s camera feature and the consumer’s camera roll; the ways the consumer interacts with ads, the time the user spends interacting with various pieces of content; the hardware and software the consumer is using, the GPS, Bluetooth signals, nearby Wi-Fi access points, beacons and cell towers; and many other categories of data.

²⁴ *Id.*

55. Meta also represents itself as a common enterprise. Meta’s financial disclosures describe Instagram, Facebook, Messenger, and WhatsApp, as Meta’s “‘family’ of products,” and report revenue and expenses for the entire “family” together.²⁵ Instagram’s Terms of Use agreement currently identifies “The Instagram Service” as “one of the Meta Products, provided to you by Meta Platforms, Inc.”²⁶ Meta’s supplemental terms for its “Meta Platforms Technologies Products” is similarly styled as an agreement between Meta Platforms, Inc. and the user.²⁷ Meta Platforms Technologies Products are defined to include its VR-related products, such as its Meta Quest and Oculus virtual reality headsets, and Meta Horizon Worlds, its virtual reality social media platform.²⁸ Meta Platforms also reports its revenue from its VR business segment in its financial disclosures.²⁹

56. Consumers’ payment in the form of time, attention, and data enables Meta to sell highly targeted, data-informed advertising opportunities, which is the foundation of Meta’s business.

²⁵ Meta Platforms, Inc. Form 10-Q, 1, 4, 33, (Q2 2023), <https://archive.ph/MSvSt> (last visited Jan. 27, 2024).

²⁶ <https://help.instagram.com/581066165581870> (last visited Jan. 27, 2024).

²⁷ Supplemental Meta Platforms Technologies Terms of Service, <https://www.meta.com/legal/supplemental-terms-of-service> (last visited Jan. 27, 2024).

²⁸ Meta Platforms Technologies Products Definition, <https://www.meta.com/legal/meta-platforms-technologies-products> (last visited Jan. 27, 2024).

²⁹ Meta Platforms, Inc. Form 10-Q, 31, (Q1 2023), <https://archive.ph/T6xDK> (last visited Jan. 27, 2024).

C. Meta Prioritizes Acquiring Young Users and Maximizing Their Time Spent on its Platforms.

57. In Meta’s business model, not all consumers are created equal. Young Users are Meta’s prized demographic.

58. Accordingly, Meta has pursued increasing Young Users’ time spent on its platforms as one of the Company’s most important goals.

59. For instance, as of November 2016, Meta’s “overall goal remain[ed] total teen time spent . . . with some specific efforts (Instagram) taking on tighter focused goals like U.S. teen total time spent.”³⁰

60. This strategy was directed by Zuckerberg, who “decided that the top priority for the company in 2017 is teens.”³¹

61. As Meta knows, Instagram is especially appealing to Young Users and is Meta’s most popular app within that demographic. Indeed, following the success of Facebook, Meta expanded considerably through a series of acquisitions. On April 9, 2012, Meta purchased Instagram, in part because it believed that Instagram was a potential competitor and a threat to Meta’s market share.³² More importantly, Instagram was most popular among young users—a market where Meta was seeking to expand, as

³⁰ MT-IG-AG-00147577

³¹ MT-IG-AG-00147577 31 MT-IG-AG-00212419

³² House Judiciary Committee documents (Mark Zuckerberg emails to David Ebersman February 28, 2012 and to unknown recipient April 9, 2012, 2012).

Facebook's primary audience aged and the platform lost its "cool" factor.³³

62. Meta's internal studies show that Young Users have an outsized influence on their entire households' attitudes towards Instagram. As Meta's internal research shows, "[t]eens are household influencers bringing [family] members (parents and younger siblings) to IG, as well as shaping what is 'normal' behavior on IG."³⁴

63. Even more fundamentally, Meta pursues Young Users because Meta's advertising customers value that audience. Among other reasons, Meta's advertising partners want to reach Young Users because they: (1) are more likely to be influenced by advertisements, (2) may become lifelong customers, and (3) set trends that the rest of society emulates.

64. Advertisers pay Meta a premium to serve advertisements to Young Users. And many advertisers are willing to pay Meta for the opportunity to reach Young Users in specific geographic markets, such as those in Nevada.

65. Meta is motivated to increase Young Users' time spent on its platforms not only because it is a meaningful stream of advertising business, but also, because the data that Meta collects from that use is itself highly valuable to the Company.

66. Meta has worked to maximize Young Users' "time spent" throughout its history. This is especially true of Instagram, which is central to Meta's Young Users acquisition strategy. Meta does this both because Young Users are a prized demographic, and because loss of

³³ Arturo Bejar Deposition (May 16, 2023), 262:22-23.

³⁴ MT-IG-AG-00022634 (pg. 3)

Young Users on its platform threatens Meta's bottom line. As noted in the company's most recent Form 10-K filing:

We believe that some users, particularly younger users, are aware of and actively engaging with other products and services similar to, or as a substitute for, our products and services, and we believe that some users have reduced their use of and engagement with our products and services in favor of these other products and services. In the event that users increasingly engage with other products and services, we may experience a decline in use and engagement in key user demographics or more broadly, in which case our business would likely be harmed.³⁵

67. In short, Meta has many strong short-term and long-term financial incentives to increase the time that Young Users spend on its platforms, including Instagram. And as described in further detail below, Meta has chased that goal with incredible success, capturing a mind-boggling amount of time and attention from a generation of Young Users.

68. This approach has been profitable. Meta reported earning \$116.6 billion in revenue in 2022, with \$23.2 billion in net income, making Meta one of the largest companies in the United States by revenue and income.

³⁵ <https://www.sec.gov/Archives/edgar/data/1326801/000132680122000018/fb-20211231.htm> (last visited Jan. 27, 2024).

69. A significant portion of these earnings come from the Young Users on Meta’s platforms. A recent study estimated the revenue derived from Young Users across the world’s largest social media platforms, including Facebook, and concluded that there were roughly 16,700,000 U.S.-based Young Users (ages 0-17 years) on the platform as of 2022.³⁶ Almost \$5 *billion* in Instagram’s ad revenue came from that cohort in the same year.³⁷ Upon information and belief, a portion of these income-generating Young Users reside in Nevada.

70. And because of his ownership stake in Meta, Zuckerberg is one of the wealthiest people in the world. In addition to financial success, Zuckerberg’s role as Meta’s CEO and Founder has made him a public figure able to exert significant influence not only over the Company, but also over society at large. In a private email exchange with at least four billionaires (and a knighted former Member of British Parliament), one of Meta’s major investors told Zuckerberg that he believed “Mark Zuckerberg has been cast as *the spokesman* for the Millennial Generation—as the single person who gives voice to the hopes and fears and the unique experiences of this generation, at least in the USA.” In a response, Mr. Zuckerberg agreed with that sentiment, stating that he is “the most well-known person of [his] generation.”³⁸

³⁶ Raffoul A, Ward ZJ, Santoso M, Kavanaugh JR, Austin S Bryn (2023) *Social media platforms generate billions of dollars in revenue from U.S. youth: Findings from a simulated revenue model*. PLoS ONE 18(12): e0295337, <https://doi.org/10.1371/journal.pone.0295337> (last visited Jan. 27, 2024); *id.* at Table 1.

³⁷ *Id.* at Fig. 1.

³⁸ MT-IG-AG-00239874

D. Social Media Use—and Ensuing Exposure to Harms—is Especially Prevalent Among Young Users of Color.

71. Research shows that a higher percentage of children of color in America use social media platforms—including Facebook—than their white counterparts.

72. A recent study by Pew, entitled *Teens, Social Media and Technology 2023*, reveals that Black and Hispanic teenagers between ages 13 and 17 spend more time on social media platforms than their white counterparts.³⁹

73. According to that study, 55% of Hispanic teenagers and 54% of Black teenagers report generally being online “almost constantly,” compared with 38% of their white teenage counterparts.

74. That study indicated that while only 3% of white children between the ages of 13 and 17 report being “almost constantly” on Instagram, the number increases to 15% for Black children and 16% for Hispanic children between the ages of 13 and 17.

75. Another study similarly found that Black and Hispanic children, ages 8 to 12, also use social media platforms more than their white counterparts.⁴⁰

76. Researchers have found that due to lower income levels, Black and Hispanic teenagers are less likely to

³⁹Pew Research Center, *Teens, Social Media and Technology 2023* (Dec. 11, 2023), <https://www.pewresearch.org/internet/2023/12/11/teens-social-media-and-technology-2023/> (last visited Jan. 27, 2024).

⁴⁰Rideout, V., Peebles, A., Mann, S., & Robb, M. B. (2022), *The Common Sense Census: Media Use by Tweens and Teens, 2021*, [https://www.commonsensemedia.org/sites/default/files/research/report/8-18-census-integrated-report-final-web 0.pdf](https://www.commonsensemedia.org/sites/default/files/research/report/8-18-census-integrated-report-final-web%20.pdf) (last visited Jan. 27, 2024).

have broadband access or computers at home, causing disproportionate reliance on smartphones and corresponding use of social media platforms.

77. Thus, while 95% of children between the ages of 13 and 17 have access to a smartphone at home, having access to a home computer remains less common for those in lower-income households.

78. Experts believe that internet usage among teenagers may be displacing other activities, including sports participation, in-person socializing, and reading, among other things.

79. With respect to reading, the 2023 *Scholastic Kids & Family Reading Report* found that the average amount of reading across all racial groups is in decline and continues to trend downward as children transition to their teenage years.⁴¹

80. The *Scholastic* study found that while 46% of kids between the ages of 6 and 8 report reading for pleasure, only 18% of children between the ages of 12 and 17 report the same.

81. These statistics raise the concern that the disparities in internet and social media platforms use may, in turn, intensify overall declines and existing differences in reading across racial groups.

82. But more broadly, Meta's internal research demonstrates that teens of color are particularly vulnerable to harms on its platforms. In one document exploring existing research, an Instagram employee discusses

⁴¹ Scholastic, *Kids & Family Reading Report*TM, <https://www.scholastic.com/content/corp-home/kids-and-family-reading-report/reading-lives.html> (last visited Jan. 27, 2024). communities of color)."

Meta’s “Reels” function (discussed *infra*) and states “[t]eens, women, LGBT people, and communities of color are disproportionately more vulnerable to harm on [Instagram] generally. Early research suggests that we see these inequitable patterns reproduced on Reels, leading to reduced engagement. Reels teams (and [Instagram generally]) need to make Reels especially safe for marginalized communities (teens, women, LGBT people, communities of color).”⁴² Meta has never shared this materially significant information with the public or with consumers of its products.

83. As of the 2020 Census, Nevada’s Black community constitutes roughly 12.1% of the State’s population, and the Hispanic community constitutes 28.7% of the State’s population.⁴³

E. Meta Directs Its Business Towards Nevada.

84. Notably, Meta allows advertisers to target Young Users based on their age and location,⁴⁴ and Instagram is massively popular among Young Users in Nevada.

85. According to Meta’s internal metrics, from July 2020 to June 2021 an average of 248,567 Nevada teens

⁴² MT-IG-AG-00057841

⁴³ <https://www.census.gov/library/stories/state-by-state/nevada-population-change-between-census-decade.html> (last visited Jan. 27, 2024).

⁴⁴ MT-IG-AG-00003503

used Instagram monthly.⁴⁵ During that time, an average of 190,885 Nevada teens used Instagram daily.⁴⁶

86. Between October 2022 and April 2023, an average of 300,456 “young adults” (according to Meta’s internal definition) in Nevada used Instagram daily.⁴⁷ During that time, an average of 486,212 “young adults” in Nevada used Instagram monthly.⁴⁸

87. Meta is able to achieve this level of engagement in Nevada at least in part because it consciously directed its business into Nevada in several ways. As part of that effort, Meta took—and continues to take—steps to enhance its brand in Nevada.

88. For example, Meta monitored the following metrics for usage in Nevada: the amount of time daily active teens spent on Instagram per day (approximately 40 minutes)⁴⁹; teen “penetration” in the state (approximately 60%)⁵⁰; the ratio of teen daily active users versus monthly active users (approximately 0.74)⁵¹; teen monthly active user “story participation” rates (approximately 0.80%)⁵²; the amount of “feed media” daily active teens consumed

⁴⁵ MT-IG-AG-00216682

⁴⁶ *Id.*

⁴⁷ MT-IG-AG-00216683

⁴⁸ *Id.*

⁴⁹ MT-IG-AG-00018939

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

per day on Instagram (approximately 16)⁵³; the amount of “stories” that daily active teens consumed per day on Instagram (approximately 28)⁵⁴; Instagram market saturation with respect to users under 35 (103%)⁵⁵; the percentage of Facebook Android monthly active users on Instagram (50.6%)⁵⁶; and the increase in monthly active users over a two month time period (16,362; a 1.52% increase)⁵⁷.

89. Perhaps most strikingly, Meta’s internal metrics show that as of 2020, Instagram had fully saturated the market for Nevada residents under 35 years of age.⁵⁸ That same year, Meta internally estimated that 100% of Nevada teens were monthly active users of Instagram.⁵⁹

90. In addition to studying usage rates, Meta worked to understand the impact Instagram had on Nevada consumers, including Nevada Young Users.

91. And of course, Meta enriched itself by selling advertisements targeted to Nevada, including advertising campaigns for teen-oriented products and services. According to Meta’s public advertising library, Meta regularly sells advertisements specific to Nevada, and it allows

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ MT-IG-AG-00059342 ⁵⁶ MT-IG-AG-00005337 ⁵⁷ MT-IG-AG-00007601 ⁵⁸ MT-IG-AG-00022714 ⁵⁹ MT-IG-AG-00031572 ⁶⁰ <https://www.facebook.com/business/help/1501907550136620> (last visited Jan. 27, 2024).

⁵⁶ MT-IG-AG-00005337

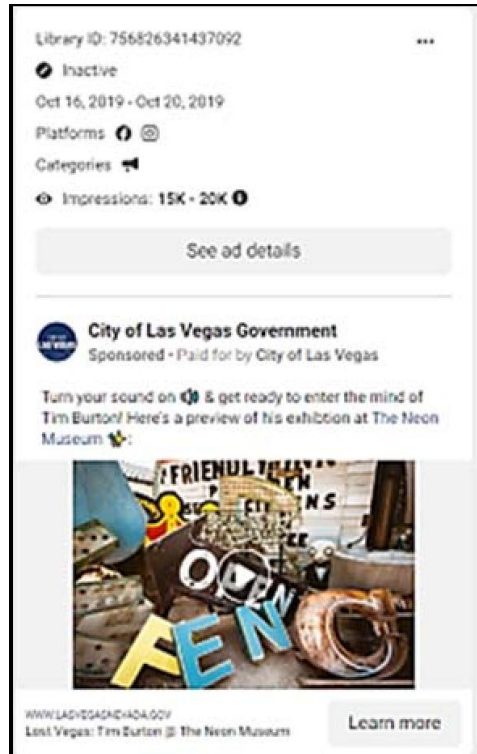
⁵⁷ MT-IG-AG-00007601

⁵⁸ MT-IG-AG-00022714

⁵⁹ MT-IG-AG-00031572

90a

businesses to target specific cities in Nevada.⁶⁰ All manner of Nevada entities advertise on Instagram to reach a Nevada audience and expand their business in Nevada. Some examples include:⁶¹



The City of Las Vegas Government

⁶⁰ <https://www.facebook.com/business/help/1501907550136620> (last visited Jan. 27, 2024).

⁶¹ Each of the following examples comes from a natural language search of Meta's "Ad Library" tool, when enables users to "[s]earch all the ads currently running across Meta technologies." https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&media_type=all (last visited Jan. 27, 2024).

91a

Library ID: 343324428190803

Active

Started running on Oct 24, 2023

Platforms

2 ads use this creative and text

See summary details

 **thepunkrockmuseum**
Sponsored

Punk Rock finally has a home where it truly belongs. In a 12,000-square-foot, 30-year-old building at 1422 Western Ave. Right next to the Las Vegas strip...club Little Darlings.

One of the best affordable neighborhoods of downtown Las Vegas is where you will find The Pun...



thePUNKROCKM

Located in Las Vegas!

Learn More

thePUNKROCKM

Punk Is Not Dead!

Learn

The Punk Rock Museum

92a

Library ID: 265024613247369

Active

Started running on Dec 18, 2023

Platforms

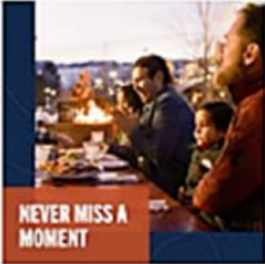
See ad details



Visit Carson City

Sponsored

Carson City, a winter wonderland nestled by the Sierra Nevada mountains. Find many seasonal activities in our newsletter! 🌨️



VISITCARSONCITY.COM

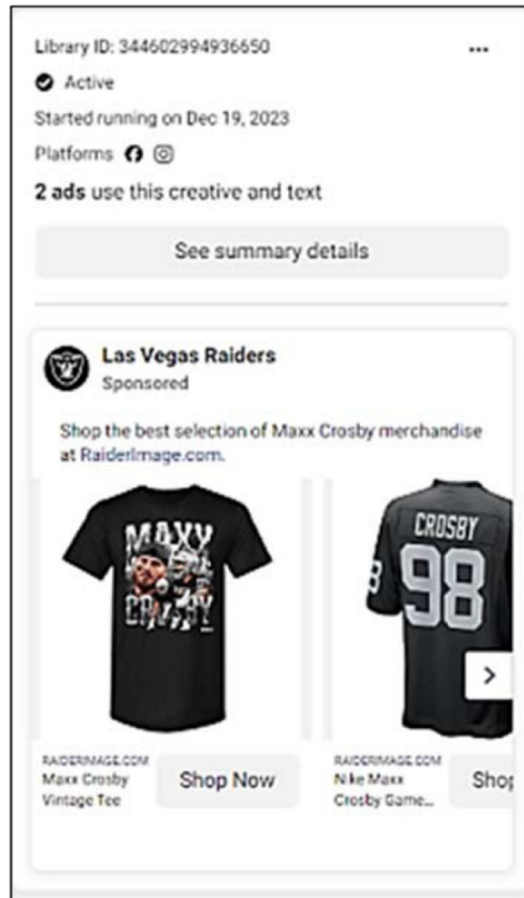
Find Your Memory Makers

Sign up for our Newsletter

Sign up

Carson City, NV

93a



The Las Vegas Raiders

92. In sum, Meta not only makes its social media platforms available in Nevada, it also—at a minimum—promotes its brand in Nevada, touts its investments in Nevada, tracks its platforms' performance in Nevada, studies its platforms' impact on Nevada residents, and sells advertisements to Nevada entities so that they can expand their businesses in Nevada. And by virtue of Meta's business model, Meta has entered into (at least)

hundreds of thousands of contracts with consumers in Nevada and sold the opportunity to serve ads specifically to those Nevada consumers.

II. META UTILIZES MULTIPLE DESIGN PRACTICES PURPOSELY INTENDED TO HOOK YOUNG USERS AND KEEP THEM ON ITS PLATFORMS IN PERPETUITY.

A. By Meta’s Design, its Platforms Induce Compulsive Use Among Young Users.

93. For generations, companies have marketed products to Young Users—from bikes to Barbies to baseball cards. Unquestionably, products like those appealed to a young audience, and their creators marketed them accordingly and achieved success.

94. Meta could have followed a similar course. It might have offered a version of its platforms that was simply appealing, but not addictive.

95. Instead, Meta intentionally designed its platforms to exploit known vulnerabilities in Young Users’ neurological development, making its platforms profoundly difficult—and in some cases impossible—for children and teens to resist.

96. As Meta’s founding president, Sean Parker, explained in 2018:

The thought process that went into building these applications, Facebook being the first of them . . . was all about: ‘How do we consume as much of your time and conscious attention as possible?’ That means that **we need to sort of give you a little dopamine hit every once in a while**, because someone liked or commented on a photo or a post or

whatever. And that's going to get you to contribute more content and that's going to get you . . . more likes and comments. It's a social-validation feedback loop . . . exactly the kind of thing that a hacker like myself would come up with, **because you're exploiting a vulnerability in human psychology.** The inventors, creators—**me, [Meta founder] Mark [Zuckerberg], [Instagram founder] Kevin Systrom on Instagram,** all of these people—**understood this consciously. And we did it anyway.**⁶²

97. On an ongoing basis, Meta pours massive resources into understanding Young Users' cognitive vulnerabilities.

98. For example, in the late 2010s, Meta's Consumer Market Research team created a "**very** deep body of work over the course of years/months" studying teens (emphasis in original). That group did "enormous work and investment" in "teen foundational research."⁶³

99. But that "very deep body of work" was not enough. In 2020 Meta started the "Teen Ecosystem Understand" workstream.⁶⁴ Part of Instagram's "growth" team, the "Teen Ecosystem Understand" workstream

⁶² Alex Hern, '*Never get high on your own supply*' – why social media bosses don't use social media, The Guardian (January 23, 2018), <https://www.theguardian.com/media/2018/jan/23/never-get-high-on-your-own-supply-why-social-media-bosses-dont-use-social-media> (last visited Jan. 27, 2024). Emphasis in this Complaint is added unless otherwise noted.

⁶³ MT-IG-AG-00124625

⁶⁴ *Id.*

aimed to deepen Meta’s understanding of the teenage audience.⁶⁵

100. On information and belief, the Teen Ecosystem Understand and Consumer Market Research workstreams were two of many Meta initiatives to study Young Users and capture more of their time and attention.

B. Meta Studies “Teen Fundamentals” to Increase Compulsive Use.

101. A May 2020 report by the Teen Ecosystem Understand workstream illustrates the lengths to which Meta studied, understood, and sought to exploit teens’ neurological vulnerabilities.⁶⁶

102. Titled “Teen Fundamentals,” the 97-page internal presentation purports to be a “synthesis of adolescent development concepts, neuroscience as well as nearly 80 studies of our own product research.”⁶⁷ The presentation’s stated goal is to “look . . . to biological factors that are relatively consistent across adolescent development and gain valuable unchanging insights to inform product strategy today.”⁶⁸

103. The first section of the internal presentation, titled “Biology,” contains several images of brains in various stages of development.⁶⁹

⁶⁵ *Id.*

⁶⁶ MT-IG-AG-00145496

⁶⁷ *Id.* (pg. 1)

⁶⁸ *Id.* (pg. 6)

⁶⁹ *Id.* (pg. 7)

104. As part of the “Biology” section, the internal presentation explained that “Unlike the body which functions wholly from day one, the brain essential [sic] spot trains certain areas and functions at a partial capacity before it is wholly developed . . . The teenage brain is about 80% mature. The remaining 20% rests in the frontal cortex . . . at this time teens are highly dependent on their temporal lobe where emotions, memory and learning, and the reward system reign supreme.”⁷⁰

105. The discussion continues: “teens’ decisions are mainly driven by emotion, the intrigue of novelty and reward . . . [making] **teens very vulnerable** at the elevated levels they operate on. **Especially in the absence of a mature frontal cortex to help impose limits on the indulgence** in these.”⁷¹

106. The next section of the Teen Fundamentals presentation was titled “Behavior.” In that section, Meta noted that “the teenage brain happens to be pretty easy to stimulate.”⁷²

107. Offering an example, the internal presentation observes that “**everytime [sic] one of our teen users finds something unexpected their brains deliver them a dopamine hit.**”⁷³

108. The next slide explains that “**teens are insatiable when it comes to ‘feel good’ dopamine effects.**”⁷⁴

⁷⁰ *Id.* (pgs. 10-11)

⁷¹ *Id.* (pg. 12)

⁷² *Id.* (pgs. 13-14)

⁷³ *Id.* (pg. 22)

⁷⁴ *Id.* (pg. 23)

109. And the following slide highlights that “**teen brains’ [sic] are especially ‘plastic’** or keen to learn presenting a unique opportunity that coupled with curiosity can send teens down some interesting rabbit holes”⁷⁵

110. Suggesting another way that teen brains are “easy to stimulate,” the internal presentation notes that “a huge driver for teen behavior is the prospect of reward. This is what makes them predisposed to impulse, peer pressure, and potentially harmful risky behavior like drugs, stunts, and pranks”⁷⁶

111. Building on that theme, elsewhere the presentation observes that “approval and acceptance are huge rewards for teens and interactions are the currency on IG. DMs [direct messages], notifications, comments, follows, likes, etc. encourage teens to continue engaging and keep coming back to the app.”⁷⁷

112. In several places, the presentation confirmed that Instagram was successfully exploiting these vulnerabilities.

113. For example, the internal presentation conceded that:

[T]een brains are much more sensitive to dopamine, one of the reasons that drug addiction is higher for adolescents and keeps them scrolling and scrolling. And due to the immature brain they have a much harder time stopping even though they want to—our own product foundation research has

⁷⁵ *Id.* (pg. 24)

⁷⁶ *Id.* (pg. 47)

⁷⁷ *Id.* (pg. 54)

shown teens are unhappy with the amount of time they spend on our app.⁷⁸

114. But that was not enough for the members of the “growth” team that authored the presentation. Instead, the presentation repeatedly asked how Instagram could become even more irresistible to teens, asking the audience to consider:

- “So, now that we know this—what is the effect of teen’s biology on their behavior? And how does this manifest itself in product usage?”⁷⁹
- “How well does IG cater to [teens’ desired] activity? How does it stack up against [its competitors]?”⁸⁰
- “Teen’s [sic] insatiable appetite for novelty puts them on a persistent quest to discover new means of stimulation . . . how can your team give teens somewhere new to go or something new to find from the product you work on?”⁸¹

115. In the end, the internal presentation reiterated: “I want to remind you all once more of the core things that make teens tick. New things, feeling good and reward. We are not quite checking all of these boxes . . . some teens are turning to competitors to supplement for [sic] those needs.”⁸² It concluded: “we [would] do well to think

⁷⁸ *Id.* (pg. 48)

⁷⁹ *Id.* (pg. 13)

⁸⁰ *Id.* (pg. 24)

⁸¹ *Id.* (pg. 27)

⁸² *Id.* (pgs. 56-57)

hard about how we can make IG an app tailored to the teenage mindset.”⁸³

116. The Teen Fundamentals presentation was shared with various teams inside Meta, culminating in its presentation to Instagram’s leadership team (including Adam Mosseri) in June 2020.⁸⁴

117. In response to the presentation, Instagram’s leadership requested additional research, which led to a subsequent report titled “Deeping Rewards to Drive More Meaningful Daily Usage.”⁸⁵ As part of that report, Instagram employees conducted user interviews and “synthesized this data with academic literature to understand how it applies at a psychological level.”⁸⁶ Through this and other related workstreams, Instagram continued to use psychological insights to gain competitive advantages.

118. On information and belief, the Teen Fundamentals presentation is just one illustration of the ongoing process by which Meta studies and exploits Young Users’ neurological development to gain competitive advantage.

C. Meta Implements Specific Design Elements Into Instagram to Induce Compulsive Use.

119. Leveraging its understanding of “the things that make teens tick,” Meta exploited Young Users’ diminished capacity for self-control through an array of platform features, including the challenged Design Elements.

⁸³ *Id.* (pg. 58)

⁸⁴ MT-IG-AG-00024188

⁸⁵ MT-IG-AG-00013682

⁸⁶ MT-IG-AG-00145596

120. Collectively, these features created and exploited obstacles to Young Users’ free decision-making, causing them to spend more time on Instagram than they otherwise would.

121. Several categories of engagement-optimizing design features are especially pernicious: Low-Friction Variable Rewards; Social Manipulation; Ephemeral Content; Push Notifications; and Harmful Filters. The State discusses each, in turn.

1. Low-Friction Variable Rewards: Endless Scroll, Autoplay, and Reels

122. The “Low-Friction Variable Reward” design element (also called the “Hook Model”⁸⁷) is a powerful cognitive manipulation principle, first identified by the psychologist B.F. Skinner in the early 20th Century.⁸⁸ It is premised on the observation that when test subjects—both humans and other animals—are rewarded unpredictably for a given action, they will engage in the action for a longer period of time than if the reward is predictable.⁸⁹ In his testing, Skinner observed that lab mice responded voraciously to random rewards. The mice would

⁸⁷ Bart Krawczyk, *What is the hook model? How to build habit-forming products*, Log Rocket Frontend Analytics (Dec. 2, 2022), <https://blog.logrocket.com/product-management/what-is-the-hook-model-how-to-build-habit-forming-products/> (last visited Jan. 27, 2024).

⁸⁸ B. F. Skinner, *Two Types of Conditioned Reflex: A Reply to Konorski and Miller*, 16 J. Gen. Psychology, 272-279 (1937), <https://doi.org/10.1080/00221309.1937.9917951> (last visited Jan. 27, 2024).

⁸⁹ Laura MacPherson, *A Deep Dive into Variable Designs and How to Use Them*, DesignLi (Nov. 8, 2018), <https://designli.co/blog/a-deep-dive-on-variable-rewards-and-how-to-use-them/> (last visited Jan. 27, 2024).

press a lever and sometimes they would get a small treat, other times a large treat, and other times nothing at all. Unlike the mice that received the same treat every time, the mice that received variable rewards seemed to press the lever compulsively.

123. At a chemical level, this is because the brain generates more dopamine in response to an uncertain reward than in response to an expected and reliable one.⁹⁰ The tendency of variable rewards to drive compulsive behavior is sometimes referred to as the “Vegas Effect,” and is the primary mechanism at work in slot machines, keeping players sitting in front of machines for hours on end (machines that, due to their limited mental development, Young Users and Youngest Users are of course forbidden from using or interacting with).⁹¹

124. Defendants are aware not only of the value of variable rewards for driving users’ online time and maximizing profits, but also the risks associated with these types of rewards. For example, in 2020, responding to internal research indicating that teen users had difficulty controlling their use of Instagram, a Meta employee

2024); Mike Brooks, *The “Vegas Effect” of Our Screens*, Psychol. Today (Jan. 4, 2019), <https://www.psychologytoday.com/us/blog/tech-happy-life/201901/the-vegas-effect-our-screens> (last visited Jan. 27, 2024).

⁹⁰ Anna Hartford & Dan J. Stein, *Attentional Harms and Digital Inequalities*, 9 JMIR Mental Health 2, 3 (Feb. 11, 2022), <https://pubmed.ncbi.nlm.nih.gov/35147504/> (last visited Jan. 27, 2024) (“At the level of our neural reward system, an uncertain reward generates a more significant dopamine response than those generated by a reliable reward.”).

⁹¹ Mike Brooks, *The “Vegas Effect” of Our Screens*, Psychol. Today (Jan. 4, 2019), <https://www.psychologytoday.com/us/blog/tech-happy-life/201901/the-vegas-effect-our-screens> (last visited Jan. 27, 2024).

wrote to a colleague: “I worry that the driving [users to engage in more frequent] sessions incentivizes us to make our product more addictive, without providing much more value. How to keep someone returning over and over to the same behavior each day? Intermittent rewards are the most effective (*think slot machines*), reinforcing behaviors that become especially hard to extinguish.” (emphasis added).

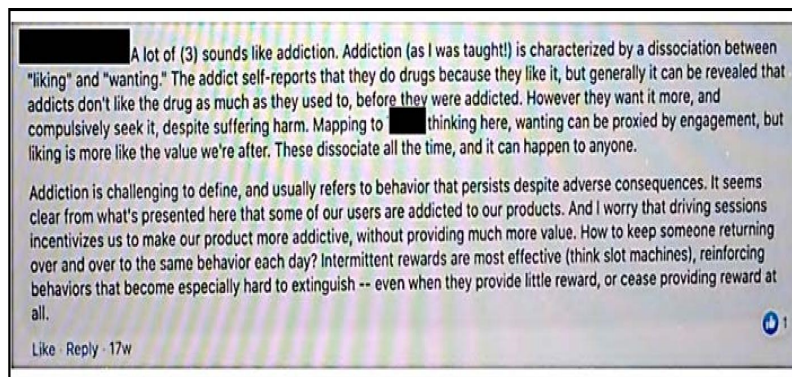


Fig. 3

i. Endless Scroll

125. One example of variable rewards design feature is the infinite or endless scroll mechanism with variable content that is deployed across social media platforms. When a platform uses endless scroll, a user is continuously fed more pieces of content, with no endpoint, as they scroll down a feed or page. When platforms load content into streams viewed by endless scroll, a user can never predict what will come next or how interesting it will be. The user is rewarded at unpredictable intervals and levels

with pieces of content they find funny, entertaining, or otherwise interesting.⁹²

126. Critically, the action required by the user is “low-friction”—that is to say, there is little commitment required of the user beyond simply scrolling through the app. This enables the user to engage in the pursuit of the next “rewarding” piece of content in perpetuity.

127. Instagram employs the endless scroll, supplying minor users with unpredictable variable rewards by strategically and intermittently surfacing content that the respective platforms predict users will want to see. But Defendants are not just making a “lucky” guess about the type of content that children—and others—would wish to engage. Rather their predictions are incredibly precise and “effective” as they are made because Instagram siphons private and personal user data to create individualized user “profiles”—including of children who uses the apps.

128. A blog post by Adam Mosseri, head of Instagram, explains, “[W]e make a set of predictions. These are educated guesses at how likely you are to interact with a post in different ways . . . [t]he more likely you are to take an action, and the more heavily we weigh that action, the higher up you’ll see the post.”⁹³

⁹² GCFGlobal.org, *Digital Media Literacy: Why We Can’t Stop Scrolling*, <https://edu.gcfglobal.org/en/digital-media-literacy/why-we-cant-stop-scrolling/1/> (last visited Jan. 27, 2024).

⁹³ <https://about.instagram.com/blog/announcements/instagram-ranking-explained> (last visited Jan. 27, 2024).

ii. Autoplay

129. Another form of navigation manipulation called “Autoplay,” is similar to endless scrolling, and is especially prevalent on social media platforms, like Instagram, that provide video content for users. Simply put, once one video is over, another one begins without any further prompting from the user.

130. Meta deploys the autoplay feature to keep Young Users on Instagram. Much like endless scroll, Stories surface automatically and continuously playing video content in their Feed and elsewhere and encouraging Young Users to remain on the platform *ad infinitum*.

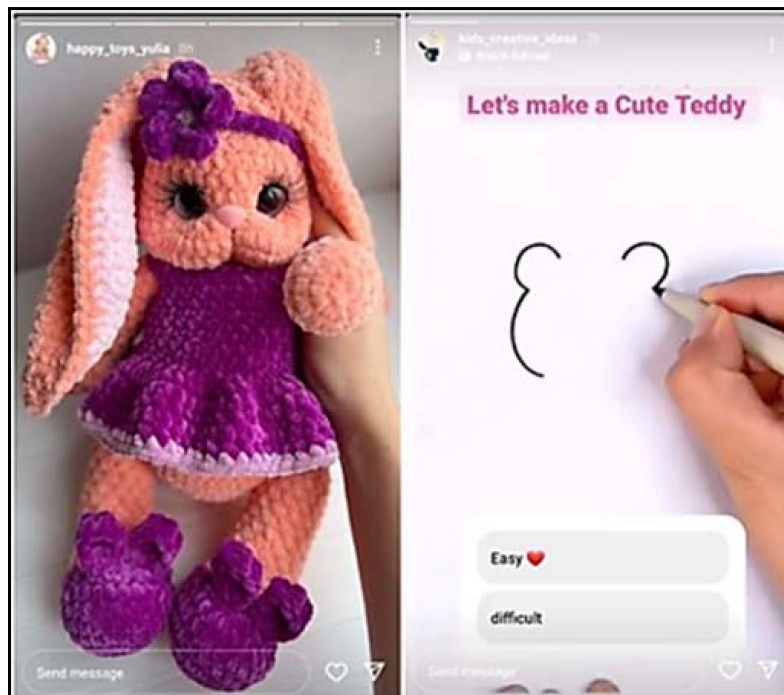


Fig. 4 - When an Instagram user views stories of an account they follow, once the timer bar at the top of the screen becomes opaque, they are automatically presented

with either the next story posted by that account, or another account's story reel.

131. AutoPlay takes away a user's sense of control, increasing the chances of binge-watch or going down a "rabbit hole." Moreover, because there is no longer any user choice in the interaction (Instagram chooses what videos will be played next), there is an increased risk of children being exposed to inappropriate, harmful content.

132. Meta understands that these are powerful tools. Tellingly, when news broke that a competitor was turning off auto-play for users under 18, Meta's internal researcher team registered surprise. One observed that "[t]urning off autoplay for teens seems like a huge move! Imagine if we turned off infinite scroll for teens." The second responded "Yeah, I was thinking the same thing. Autoplay is HUGE."⁹⁴

iii. Reels

133. Meta's popular Reels product has these same characteristics. An internal strategy presentation shows that Reels is "a TikTok competitor for short and entertaining videos" and one of "three big bets" that "Instagram focused on . . . to bring value to teens" in 2020.⁹⁵

134. Videos on Reels automatically and perpetually play as the user swipes the screen up to the next video. The short-form nature of Reels (between 15 to 90 seconds, as of April 2023) makes it difficult for Young Users to close the app or clock how many videos they have watched or how long they have spent. Other aspects of Reels—including the placement of the like, comment, save, and

⁹⁴ MT-IG-AG-00058023

⁹⁵ MT-IG-AG-00031572 (pg. 29)

share buttons on top of the video—reduce or prevent interruption and keep the user constantly viewing the video.

135. Meta’s development of these engagement features on its platforms disregarded its own internal research about how design choices cause compulsive use. In June 2018, an internal presentation called “Facebook ‘Addiction,’” including “mindless” consumption of a feed and the fact that “it is easy to keep scrolling and go on frequently” make it “difficult to limit one’s use.”⁹⁶

136. Internally, Meta employees recognized that Reels’ design was harmful to Young Users. As one employee observed in September 2020, “Reels seems to be everything they denounce in the stupid documentary [Netflix’s *The Social Dilemma*, which raised alarms about teens’ time spent on social media], and everything we know from our research: passive consumption of an endless feed, without any connection to the content creator. Yay.” A Meta mental health researcher responded, “Exactly. Ugh.”⁹⁷

2. Social Manipulation

137. Defendants utilize social manipulation to keep children addicted to their platforms. At its most basic form, this design practice leverages a child’s desire for social relationships in order to encourage more time spent on the platform and more engagement with the platform (which in turn leads to more opportunities for Defendants to monetize the child users).

138. Children are particularly vulnerable to social manipulation techniques. Younger adolescents have specific

⁹⁶ MT-IG-AG-00312902 (pg. 35)

⁹⁷ MT-IG-AG-00132387

developmental needs for social connectedness and are particularly attuned to social validation.⁹⁸ This can “lead to greater relinquishing of security in certain arenas to gain social validation and belonging, for example, disclosing publicly to participate in online communities and accrue large amounts of likes, comments, and followers.”⁹⁹ One pair of researchers investigating the phenomena write:

[T]o tweens and teens, the kind of “rewards” social media promise are even more meaningful. Teens are primed to crave and value social validation, which is part of how they make sense of where they fit into their social worlds. Their biological sensitivity to social feedback makes them more susceptible to the pull of social media, which is at the ready with a promise of 24/7 access to likes and praising comments. Capacities for self-regulation and impulse control are also a work in progress during the teen years, which adds to the challenge of pulling away.¹⁰⁰

⁹⁸ Nicholas D. Santer et al., *Early Adolescents’ Perspectives on Digital Privacy*, Algorithmic Rights and Protections for Children (2021) at 6, 30.

⁹⁹ *Id.* at 6 (citing J.C. Yau & S. M. Reich, “It’s Just a Lot of Work”: *Adolescents’ Self-Presentation Norms and Practices on Facebook and Instagram*, 29 J. Res. on Adolescence 196, 196-209 (2019)).

¹⁰⁰ Emily Weinstein & Carrie James, *Behind Their Screens: What Teens Are Facing (And Adults Are Missing)*, MIT Press, at 33 (2022) (citing Lucy Foulkes and Sarah-Jayne Blakemore, *Is There Heightened Sensitivity to Social Reward in Adolescence?*, 40 Current Opinion Neurobiology 81 (2016)).

139. Many social manipulation design features induce anxiety in children that they or their content may not be as popular as that of their peers. In the words of a Massachusetts high school student who spoke with Common Sense Media, “[I]f you get a lot of likes, then ‘Yay,’ you look relevant, but then if you don’t get a lot of likes and/or views, it can completely crush one’s confidence. Especially knowing that you’re not the only one who’s able to see it.”¹⁰¹ Not only are children spotting and seeing posts, but now they are obsessing over the popularity of their posts and those of others. These factors all converge to create a feedback loop: because children crave this social reinforcement, they seek it out, but ultimately children are unequipped with the tools to protect themselves against the allure of “rewards” that these manipulative social media designs purportedly promise.

i. Quantified Popularity of a Minor’s Account or Content

140. This design element “gamifies” a user’s popularity by displaying (publicly, privately, or both) the number of friends or connections a user has, the number of interactions their content has received, and sometimes also the names or usernames of specific other users who have interacted with the user or their content. Metrics that may be displayed include views, likes, dislikes, reactions, and comments received on content.

141. These tallies act as quantified proof of popularity and exploit children’s natural tendency to pursue social relevance. Instagram’s own internal studies show that

¹⁰¹ Katie Joseff, *Social Media Is Doing More Harm than Good*, Common Sense Media (Dec. 17, 2021), <https://www.commonsensemedia.org/kids-action/articles/social-media-is-doing-more-harm-than-good> (last visited Jan. 27, 2024).

“Likes” function as emotional currency. If children’s posts get Likes, they feel validated, but the fewer Likes they get, the worse they feel.

142. Meta knows that social comparison is harmful to young users but good for Meta’s bottom line. For example, in emails exchanged in February 2021 (discussing a potential new feature called a “social comparison empathy dashboard”), Meta employees including Darius Kilstein and Betty Li discussed how social comparison is valuable to Instagram’s business model while simultaneously causing a lot of harm to teen girls.¹⁰² Kilstein noted that if Meta worked to eliminate social comparison on Instagram, Meta would likely lose users to other platforms.¹⁰³ Social comparison “was also associated with greater time spent.”¹⁰⁴

143. Meta knows that adolescents using Meta platforms have a propensity to compare themselves to peers, and that social comparison and pressure to be perfect on Instagram have significant negative impacts on young users’ mental health.¹⁰⁵ Critically, Meta’s researchers were “confident of a causal link between [seeing] Like counts and social comparison.”¹⁰⁶

144. An internal Meta document from 2020 notes that “we know from previous internal and external research that social comparison is linked to multiple negative well-

¹⁰² MT-IG-AG-00202018; *see also* MT-IG-AG-00058695 (pg. 20) (data collected from “likes” is used to inform advertisements)

¹⁰³ MT-IG-AG-00202018

¹⁰⁴ MT-IG-AG-00057062 (pg. 8)

¹⁰⁵ MT-IG-AG-00032104

¹⁰⁶ MT-IG-AG-00022621 (pg. 12)

being outcomes (*e.g.*, increased loneliness, worse body image, and negative mood or affect).”¹⁰⁷

145. A January 2020 study that Meta conducted found that “[s]ocial comparison is . . . higher among younger than older people. Younger people are more susceptible to peer influence and social comparison.”¹⁰⁸

146. Just three months later, Meta conducted another internal study¹⁰⁹ that revealed, *inter alia*, that:

- “About 1 out of 10 people experience negative social comparison on Instagram often or always” (emphasis in original);¹¹⁰
- “About 1 in 4 people think that Instagram makes social comparison worse”;¹¹¹
- “People receive about 5% as many Likes on their own posts as those they see on IG”;¹¹² and
- “Seeing high Like counts is associated with feeling worse (more negative, less positive comparison).”¹¹³

¹⁰⁷ MT-IG-AG-00082314

¹⁰⁸ “Country Differences in Social Comparison on Social Media,” MT-IG-AG-00002557, p. 3; *see also* MT-IG-AG-00124241 at pg. 2; *see also* MT-IG-AG-00140439 (relationship between age and appearance comparison/body image issues. Becomes higher the younger a user is).

¹⁰⁹ “Social comparison on Instagram,” Mar. & Apr. 2020, MT-IG-AG-00002779

¹¹⁰ MT-IG-AG-00002779 (pg. 6)

¹¹¹ *Id.*

¹¹² MT-IG-AG-00002779 (pg. 13)

¹¹³ *Id.*

147. Researchers at Meta clearly documented that appearance-based comparison on Instagram was worse for teenagers and young adults compared to older adults, and worse for female users across all age groups 60 and under. The highest rates of negative appearance-based comparison on Instagram were for teen girls, aged 13-18.¹¹⁴

148. In an internal presentation from 2021, Meta employee Shilpa Mody noted that teens suffered from “constant negative comparisons” on Instagram because Meta recommended triggering content to them and continued showing them “like” counts.¹¹⁵

149. Meta knows that “66% of teen girls and 40% of teen boys experience negative social comparisons measuring their appearance against celebrities and other influencers’ when they use Instagram.”¹¹⁶

150. Further, Meta knows from its own internal research that being exposed to “like” counts on Instagram results in more negative comparison among users.¹¹⁷ Researchers noted in October 2020 that “within every examined demographic group, seeing posts with more extreme Like counts (1M+) was associated with feeling worse: more negative social comparison.”¹¹⁸

¹¹⁴ MT-IG-AG-00140438

¹¹⁵ MT-IG-AG-00140355; *see also* MT-IG-AG-00140350 (related chat)

¹¹⁶ MT-IG-AG-00209526; MT-IG-AG-00185329; MT-IG-AG-00144635

¹¹⁷ MT-IG-AG-00032150, (pg. 4)

¹¹⁸ MT-IG-AG-00022621 (pg. 2)

Project Daisy

151. In 2020, Meta ran a test program called “Project Daisy,” where the “like” counts on Instagram posts were hidden. There were two pilot versions of “Project Daisy”: “Pure Daisy” (wherein the “like” counts on all posts except one’s own were hidden) and “Popular Daisy” (wherein the “like” counts on posts from certain highly followed accounts were visible, but the “like” counts on the average users’ posts were hidden).¹¹⁹

152. Both “Daisy” programs successfully “reduced the negative impact of seeing posts with many Likes.”¹²⁰ “Pure Daisy” was more effective than “Popular Daisy,” but both reduced users’ experiences of negative social comparison.¹²¹ Young users told Meta that hiding “like” counts made them care less about the number of “likes.”¹²²

153. Meta knew that “social comparison on Fb and IG is highest among teens and young adults” and that Project Daisy “had a statistically significant impact on reducing the frequency of ‘like’ comparison” for teens.”¹²³

154. An internal Meta email from August 2020 noted that Daisy resulted in “less social comparison” and that “negative social comparison decreases more over time.”¹²⁴

¹¹⁹ “Social comparison on Instagram,” Mar. & Apr. 2020, MT-IG-AG-00002779 (pg. 13)

¹²⁰ *Id.*

¹²¹ *Id.*; *see also* MT-IG-AG-00082315 (pg. 4); MT-IG-AG-00082314 (pg. 4)

¹²² “Project Daisy Launch Discussion,” MT-IG-AG-00170216 (pg. 10)

¹²³ MT-IG-AG-00145496 (pgs. 37-38)

¹²⁴ MT-IG-AG-00082314 (pg. 4)

While an internal document from March 2020 recognized that hiding Like counts would be the “most effective” intervention to reduce social comparison for Instagram users in the US.¹²⁵

155. Rather than expanding “Project Daisy,” a program with demonstrably successful results in reducing negative social comparison, Meta instead chose to continue to prioritize the display of “popular” posts,¹²⁶ opting to continue using the very system it knew to be especially damaging to adolescents. This choice was made notwithstanding the fact that Meta’s internal researchers “HUGELY pushed for Daisy” to be implemented.¹²⁷

156. In an internal chat from April 2021 Instagram’s head of public policy Karina Newton noted that experts concluded that teens’ inability to distinguish between online and offline created a “net negative for teens and brain development.”¹²⁸ In an internal email from the same day, Ms. Newton noted “we have continued to get the advice [from experts] that we should have Daisy on by default for teens.”¹²⁹

157. Yet, even though Meta knew that implementing Daisy as opt-in would not be anywhere as effective as a default, and even though Newton made “really good arguments” for why Meta should make Daisy default for teens

¹²⁵ MT-IG-AG-00020244 (pg. 5)

¹²⁶ <https://techcrunch.com/2016/03/15/filteredgram/> (last visited Jan. 27, 2024).

¹²⁷ MT-IG-AG-00129785 (pg. 2) (researcher Moira Burke “HUGELY push[ing] for Daisy” to be implemented)

¹²⁸ MT-IG-AG-00139240; *see also* MT-IG-AG-00139322

¹²⁹ MT-IG-AG-00139322

(including the fact that experts recommended that Daisy be a default setting for teens), Adam Mosseri “quickly” declined this proposal in July 2021, citing concerns that making Daisy a default setting for teens would validate the external “perception that ‘likes’ are bad for young people.”¹³⁰

158. Externally, however, Mr. Mosseri used Daisy as a materially misleading talking point to claim that Meta was making Instagram safer.¹³¹

159. For example, in September 2019, a Meta employee sent talking points to Adam Mosseri to prepare him for his appearance on the Today Show that included “Key Messages: well-being is my #1 priority”, “if it means people will use Instagram less, ok if it makes people safer” and that, specific to hiding like counts, Meta was “willing to make changes that will reduce the amount of time people spend on Instagram if it makes them safer.”¹³²

160. In January 2020, a Meta employee noted “I’m at the social impact summit where there’s now a fireside chat with Fidji [Simo, former head of the Facebook App] and Adam Mosseri. When Adam asked what he’s most excited for in 2020, he listed three things. (1) delivering on our promises to lead in bullying, (2) getting daisy out the door, and (3) while acknowledging they aren’t sure if this is

¹³⁰ MT-IG-AG-00141488

¹³¹ MT-IG-AG-00164030; *see also* MT-IG-AG-00117010 (pg. 42)

MT-IG-AG-00129785 (pg. 2) (researchers “HUGELY push[ing] for Daisy” to be implemented); *id.* (pg. 3) (Adam Mosseri put Meta “in an awful position” because he “publicly talked about [Daisy], all but promised we’d do this.”); *see also* MT-IG-AG-00229396

¹³² MT-IG-AG-00164030 (pgs. 1-2)

what they'll prioritize, he thinks it will be social comparison. Check check check. Sounds like we are prioritizing the right things." Another employee responded sardonically: "I just hope this is more real than the well-being priority for the FB App!" acknowledging Meta's prior failures to deliver on its promises in well-being.¹³³

161. A February 2020 internal document noted "daisy was announced last year and is expected to be the primary marketing focus this year."¹³⁴ A "Company Narrative" document from March 2021 lists Daisy as a "key story" to land externally regarding Meta's efforts to improve user well-being, when Meta's leaders were already ignoring researchers' pleas that Daisy be implemented as a default setting because making it opt-in would not meaningfully improve user well-being.¹³⁵ Similarly, Meta made a public statement, stating: "We do internal research to ask hard questions and find out how we can best improve the experience for teens and we will continue doing this work to improve Instagram and all of our apps."¹³⁶

162. Internally, Meta employees noted that projects like Daisy "can easily be impeded by other agendas,"¹³⁷ and Meta's decision *not* to implement Daisy as a default

¹³³ MT-IG-AG-00109585

¹³⁴ MT-IG-AG-00117010 (pg. 42)

¹³⁵ MT-IG-AG-00179744 (pg. 14)

¹³⁶ MT-IG-AG-00187665 (pg. 2)

¹³⁷ MT-IG-AG-00117980 (pg. 1)

setting was based on its potential negative effect on engagement, content, and sharing, and therefore, its potential 1% negative effect on Meta’s revenue.¹³⁸

163. Meta tracked the effects of different variants of Daisy on key engagement metrics related to sessions and daily active users.¹³⁹ As Meta internally notes, social comparison on Instagram, are not addressed due to internal organizational politics and hindered by Meta’s singular focus on metrics, engagement, and revenue: “To me it seems like the hardest part about shipping stuff in [social comparison] is going to be organizational—like anything we want to ship is probably going to hurt another team’s metrics.”¹⁴⁰

164. Internally, Meta expressly acknowledged that any changes to improve teen safety and well-being (such as Project Daisy) would need to be balanced with teen engagement (i.e., the related effect on Meta’s revenue

¹³⁸ MT-IG-AG-00194995; MT-IG-AG-00041684; MT-IG-AG-00044394; MT-IG-AG-00045308; MT-IG-AG-00067971; *see also* MT-IG-AG-00117980 (pg. 1) (referencing Daisy being impeded by “other agendas”); MT-IG-AG-00129624 (acknowledging that Daisy would have had “small but probably non-trivial revenue impacts”); MT-IG-AG-00182480 (pg. 5) (acknowledging that Daisy had approximately a 1% impact on ad revenue); MT-IG-AG-00114352 (pg. 13) (Meta employee discussing a “push[] for no launch” of Daisy because of, in the employee’s opinion, “DS / revenue”); MT-IG-AG-00074990; MT-IG-AG-00067918; MT-IG-AG-00170965 (explaining decision not to launch Daisy permanently or universally); MT-IG-AG-00179839 (Discussion of 1% drop in revenue that would have been attributable to pure Daisy); MT-IG-AG-00226835 (pgs. 2-3)

¹³⁹ MT-IG-AG-00047964 (pg. 1)

¹⁴⁰ MT-IG-AG-00135913

source).¹⁴¹ Certain Meta employees went so far as to flip-pantly criticize Meta’s mental health teams and projects like Project Daisy, admitting that they “fought tooth and nail” against these mental health initiatives being implemented.¹⁴²

¹⁴¹ MT-IG-AG-00187913; *see also* Arturo Bejar Deposition (May 16, 2023), 88:20-89:20 (“Q. Why would the protect and care team fit within the growth part of the structure? A. I—I do not think it does. I think it puts a big conflict of interest between protect and care and growth. Growth’s purpose is to increase engagement, increase account, registrations, and—account registrations, so new accounts, and then to help people who are no longer perhaps using the product to go back on the product. So how—how do you notify people or engage them to come back in to the product. And I believe that that is in conflict with a team whose job is to understand the harms on the platform and is able to help people if they’re spending too much on the platform, as a good example, ensuring that—that—that there’s a healthy amount of time spent. If you’re part of the growth team, that would be in direct opposition with that.”); Arturo Bejar Deposition (May 16, 2023), 97 (“Q. So in other words, is it fair to say that the company was resistant—in your experience in the 2019 to 2021 time period, the company was resistant to implement features that might reduce harms if—if those features would also reduce user engagement? A. I believe so. And i think if you were to talk to people within the well-being team and ask them, did you feel that you could make these things available to the people that impact them and that you have a good process to have conversations about potential impacts on—on engagement, that many people would say, and again, I’m not speaking on behalf of other people, but I think people would say that they don’t feel comfortable putting things forward that might negatively impact engagement. What I can speak to from firsthand experience, is the other side, the other metric, which is the one that is, I think, profoundly problematic, which is prevalence. So prevalence is discernible harm.”); *see also* MT-IG-AG-00006618 (discussing other harm reduction in terms of impact on DAP/MAP)

¹⁴² MT-IG-AG-00013295

165. Ultimately, Project Daisy “got stuck in a political war b[e]tw[een]n Fidji [Simo, then-head of the Facebook App] + Adam + Mark,”¹⁴³ and Meta effectively abandoned Daisy. In point of fact, Meta’s leadership specifically recommended “NOT shipping Pure Daisy,” calling it “extremely low on the long list of problems we need to solve.”¹⁴⁴

166. However, Meta also knew to “expect comms PR blowback” for this decision and thought about “how to mitigate” public anger.¹⁴⁵ Externally, Meta made misleading statements regarding why Daisy wasn’t implemented, stating falsely that Daisy was not as effective as Meta hoped it would be, and hiding the true reason why Meta abandoned Daisy (because it had potential negative impacts on engagement and revenue). This was notwithstanding Mosseri’s claim in 2019 that Meta was “willing to make changes that will reduce the amount of time people spend on Instagram [by hiding like counts] if it makes them safer.”¹⁴⁶

167. A May 2021 Meta blog post stated that although the company tested Daisy “to see if it might depressurize people’s experience on Instagram,” Meta decided not to implement it as a default¹⁴⁷ because “not seeing like counts

¹⁴³ MT-IG-AG-00081711 (pg. 2)

¹⁴⁴ MT-IG-AG-000459596 (pg. 5); *see also* MT-IG-AG-00013253 (pg. 2) (Daisy defunded before Meta decided not to implement it)

¹⁴⁵ MT-IG-AG-000459596 (pg. 5)

¹⁴⁶ MT-IG-AG-00164030 (pgs. 1-2)

¹⁴⁷ Making a setting “default” vs. “opt-in” has significant impact as to the setting’s overall adoption, particularly among the Young User cohort. An August 6, 2021 internal Meta document discussing Daisy

was beneficial for some, and annoying to others.”¹⁴⁸ Similarly, external talking points on Daisy stated that Meta was implementing Daisy as an opt-in feature because “[f]or some people, hiding public like counts helped people focus less on the number and more on the content, [but] for others it didn’t really matter much.”¹⁴⁹

168. But these kinds of public-facing statements cannot be reconciled with Meta’s internal acknowledgement that Daisy “is one of the clearest things (supported by research) that we can do to positively impact social comparison and well-being on IG and we should ship it.”¹⁵⁰ On the same email thread, another Meta researcher wrote that social comparison was “shown (repeatedly) that it’s among the top drivers of well-being on FB and IG” and that “Daisy is such a rare case where a product intervention can improve well-being for **almost everyone** that uses our products.”¹⁵¹

169. Ultimately, Daisy presented no negatives except for a “small dip in engagement and revenue from

research notes that “[t]eens in the opt-out condition were significantly less likely to feel worse about themselves because of the number of likes other people received on their Instagram posts.” The research also found that “[t]eens are more likely to keep like counts hidden when by default it was hidden. [W]hen daisy controls are opt-in, only 0.72% of people choose to hide like counts, but when they’re opt-out, 35% leave their like counts hidden.” MT-IG-AG-00141826 (pgs. 1-2). Simply put, if Defendants wish to help teens, they must make this feature default and not opt-in.

¹⁴⁸ <https://about.instagram.com/blog/announcements/giving-people-more-control> (last visited Jan. 27, 2024).

¹⁴⁹ MT-IG-AG-00179996 (pgs. 3-4); *see also* MT-IG-AG-00229342

¹⁵⁰ MT-IG-AG-00082314 (pg. 6)

¹⁵¹ *Id.* (emphasis added)

Daisy.”¹⁵² But in an April 2021 internal email rejecting a version of Daisy for youth that could not be turned off, Miki Rothschild explicitly stated that Meta “should maintain option value over some extra PR credit.”¹⁵³

170. In March 2020, Meta’s own researchers recognized that Meta was playing fast and loose with its description of Daisy’s effects, and they raised concerns with attempts to portray Daisy externally as not improving well-being.¹⁵⁴ One Meta employee even noted despairingly that if the company wouldn’t implement Daisy despite existing research on its positive effects on well-being, she was “doubtful” that Meta would implement “any broad product changes with the purpose of improving user well-being.”¹⁵⁵

3. Ephemeral Content

171. As research shows and Meta knows, Young Users are developmentally wired such that the fear of missing out (“FOMO”) is a “repeatedly identified driver of smartphone and social media use[.]”¹⁵⁶ Meta induces constant engagement by making certain content ephemeral.

¹⁵² MT-IG-AG-00135287

¹⁵³ MT-IG-AG-00086495

¹⁵⁴ MT-IG-AG-00117682 (pgs. 2-3)

¹⁵⁵ MT-IG-AG-00130241 (pgs. 3-4); MT-IG-AG-00201867 (Lori Malahy says, “I’ve been getting more and more signal on the anxiety around aligning IG WB work with the overall narrative and strategy across the board. In today’s meeting, they particularly called out not wanting to get into a similar situation as what happened in the past about Daisy.”)

¹⁵⁶ Laura Marciano, Anne-Linda Camerini, Rosalba Morese, *The Developing Brain in the Digital Era: A Scoping Review of Structural*

This dovetails with a psychological concept identified by B.F. Skinner as “avoidance,” meaning that an individual performs a behavior to avoid a negative outcome.¹⁵⁷

172. Instagram utilizes avoidance as a design element by creating ephemeral posts, called “Stories,” which disappear 24 hours after being originally posted. Another example is “Live,” which gives users the ability to livestream videos to followers or the public.¹⁵⁸ When an account “goes Live,” the Instagram Platform sends out a notification that reads, “[@user] started a live video. Watch it before it ends!”¹⁵⁹

173. An executive summary circulated to Sheryl Sandberg in 2016 regarding Live content indicated the goals “To drive substantial watch time via Live” and the “emphasis on partners to appeal to teens.”¹⁶⁰

174. Because of the impermanence of Stories and Live, users are incentivized to check their Instagram feeds more often, and for longer periods, so as not to miss out on any posts that may soon vanish. A recent analysis correlated use of Stories with addiction:

and Functional Correlates of Screen Time in Adolescence, Front. Psychol., Vol. 12 (Aug. 27, 2021) <https://www.frontiersin.org/articles/10.3389/fpsyg.2021.671817/full> (last visited Jan. 27, 2024).

¹⁵⁷ GameQuitters, *Are Video Games Designed to Be Addictive?*, <https://gamequitters.com/are-video-games-addictive/> (last visited Jan. 27, 2024).

¹⁵⁸ <https://www.facebook.com/formedia/tools/facebook-live> (last visited Jan. 27, 2024).

¹⁵⁹ <https://www.planoly.com/blog/instagram-live-guide> (last visited Jan. 27, 2024).

¹⁶⁰ MT-IG-AG-00217683

[U]ser brain engagement with Instagram Stories has a significant positive impact on psychological dependency, denoted by cognitive preoccupation and compulsive use of Instagram Stories. The literature has shown that a high level of engagement plays a predictive role in addictive use of Internet activities, and the findings of this study indicate that users who are highly engaged with Instagram Stories tend to become dependent on it. As users obtain a variety of gratifications from using Instagram Stories, they are likely to become more reliant on it, potentially leading to excessive use. . . . [Further] it is clear that negative feelings exert an even stronger influence than pleasant feelings on the development of psychological dependency in the current context. On the one hand, the positive feelings that users experience from using Instagram Stories may reinforce their addictive patterns of its usage. On the other hand, because users may also experience negative emotions as a result of engaging in social interactions and self- and identity-related activities using Instagram Stories (e.g., unsuccessful self-promotion, missed opportunities, social comparison), they may become more dependent on the platform to help regulate and alter such mood states with the hope of bringing their affect back to optimal levels. However, this is alarming, as recent studies conducted by Facebook show that frequent use of Instagram

could lead to detrimental effects on young users' mental health.¹⁶¹

175. Unlike content delivery systems that permit a user to view existing posts on a schedule convenient for the user, ephemeral content is only available on a temporary basis—incentivizing users to engage with the ephemeral content immediately.

176. Internal research found that FOMO-induced usage of Meta's platforms results in other harms. For example, young girls are particularly vulnerable to bullying and harmful interactions “potentially due to their unwillingness to limit interactions due to fear of missing out on connections, their optimism, and (sometimes) lack of concern regarding their privacy online.”¹⁶²

177. Meta could make Live and Stories available for viewing days or weeks after they are created, allowing Young Users to take meaningful breaks from its platforms (for instance, during the school week or while on vacation) without missing content. Instead, Meta deploys ephemeral content features because it knows Young Users' fear of missing out on content will keep them glued to its platforms.

178. For instance, an October 2019 internal presentation entitled “Teen Mental Health Deep Dive” discussed

¹⁶¹ Jia-Dai (Evelyn) Lu, Jhih-Syuan (Elaine) Lin, *Exploring uses and gratifications and psychological outcomes of engagement with Instagram Stories*, Computers in Human Behavior Reports, Vol. 6 (May 2022), 100198, <https://www.sciencedirect.com/science/article/pii/S245195882200032X> (last visited Jan. 27, 2024) (internal citations omitted).

¹⁶² MT-IG-AG-00200488

the findings from a survey of over 2,500 teenagers who use Instagram on at least a monthly basis.¹⁶³

179. That presentation noted that “[y]oung people are acutely aware that Instagram can be bad for their mental health, *yet are compelled to spend time on the app for fear of missing out on cultural and social trends.*”¹⁶⁴

180. Even though it knew ephemerality was fueling out-of-control Instagram usage, Meta pressed forward. Illustrating the Company’s mindset, in 2021 a user experience researcher observed that direct messages on Instagram “were not urgent (especially compared to other apps like Snapchat)” and “consisted mainly of videos and memes from friends which could be watched at [a user’s] leisure.”¹⁶⁵ The researcher noted that “we need to develop new products that increase the possibilities for time-sensitive interactions on [Instagram]”¹⁶⁶

4. Push Notifications: Audio, Visual, and Haptic Alerts

181. Meta causes Young Users to increase their time spent on its platforms by inundating them with notifications when they are off Instagram, in an effort to entice them to stop whatever else they are doing and return to engaging with social media. By default, Instagram peppers users (including Young Users) with frequent alerts or notifications intended to cause users to open the application.

¹⁶³ MT-IG-AG-00000029 (pg. 3)

¹⁶⁴ *Id.* (pg. 25)

¹⁶⁵ MT-IG-AG-00022634 (pg. 32)

¹⁶⁶ *Id.*

182. For example, because Instagram is Meta’s application most commonly accessed by young users through smartphones in the United States, Meta relies heavily on alerts in efforts to monopolize young users’ attention on that platform. These include haptic alerts, banner notifications, sound notifications, badge notifications (persistently displayed red indication of the number of events that have not yet been viewed by the user), and e-mail notifications.¹⁶⁷

183. These alerts are disruptive for all users but are especially harmful for minor children, who are particularly vulnerable to distraction and psychological manipulation. Echoing Meta’s “Teen Fundamentals” research, independent academics have observed that these notifications impact the brain in similar ways as narcotic stimulants:

Although not as intense as [sic] hit of cocaine, positive social stimuli will similarly result in a release of dopamine, reinforcing whatever behavior preceded it . . . Every notification, whether it’s a text message, a “like” on Instagram, or a Facebook notification, has the potential to be a positive social stimulus and dopamine influx.¹⁶⁸

184. Preying on that vulnerability, by default Meta notifies Young Users when another user follows them, likes their content, comments on their content, “tags”

¹⁶⁷ <https://www.facebook.com/help/530847210446227> (last visited Jan. 27, 2024).

¹⁶⁸ <https://sitn.hms.harvard.edu/flash/2018/dopamine-smartphones-battle-time/> (last visited Jan. 27, 2024).

them, mentions them, sends them a message, or “goes live” (if the young person follows the user).

185. As Meta has known for years, Young Users have a difficult time resisting these notifications. In an internal analysis of “Leverage for Teen Growth,” a member of the “Instagram Growth Data Science Team” noted that Defendants could “Leverage teens’ higher tolerance for notifications to push retention and engagement.”¹⁶⁹

186. In a November 2019 internal presentation entitled “IG Notification Systems Roadshow,” Meta’s employees acknowledged that some of its users are “overloaded because they are inherently more susceptible to notification dependency.”¹⁷⁰

187. Similarly, in an internal presentation titled “State of US Teens 2020”—authored by the “IG Growth Analytics” team—Meta observed that teens “have longer time spent than adults because they tend to have more sessions per day than adults. This may be because U.S. teens are more sensitive to notifications and have more notification-driven sessions than adults.”¹⁷¹

5. Harmful Filters

188. On September 30, 2021 while testifying before Congress, Meta executive Antigone Davis denied that Meta contains features that promote eating disorders, stating: “[w]e do not direct people towards content that promotes eating disorders. That actually violates our policies, and we remove that content when we become aware

¹⁶⁹ MT-IG-AG-00004405 (pg. 9)

¹⁷⁰ MT-IG-AG-00028901 (pg. 14)

¹⁷¹ MT-IG-AG-00031572 (pg. 51)

of it. We actually use AI to find content like that and remove it.”

189. She also testified that for teen girls struggling with “loneliness, anxiety, sadness, and eating disorders,” they “were more likely to say that Instagram was affirmatively helping them, not making it worse,” and that Instagram “work[s] with experts to help inform our product and policies” around eating disorders. Meta publishes this same statement in a section devoted to “[e]ating disorders” and “negative body image” in its “parent and guardian’s guide to Instagram,” which it makes available on its website.

190. In contrast to these public claims, Meta’s internal communications reveal that it prioritizes youth engagement to the detriment of Young Users by, *inter alia*, making visual filters that simulate facial plastic surgery available on its social media platforms, including Instagram.

191. Meta’s leadership (including Adam Mosseri and Karina Newton) came to understand that Meta was “actively encouraging young girls into body dysmorphia”¹⁷² with these filters. Meta leaders communicated these concerns about the “severe impacts” of these filters on users’ mental health to Mark Zuckerberg.¹⁷³

192. Mr. Zuckerberg, however, dismissed these concerns, which were raised by multiple employees.

193. In November 2019, Margaret Gould Stewart, then-Meta’s Vice President of Product Design and Responsible Innovation, initiated an e-mail conversation, with the subject “[Feedback needed] Plastic Surgery AR

¹⁷² MT-IG-AG-00166909 (pg. 10)

¹⁷³ MT-IG-AG-197588 (pg. 7)

Effects + Camera Settings Policies,” addressing recipients including Andrew Bosworth (Meta’s Chief Technology Officer), Adam Mosseri (Head of Instagram), Fidji Simo (then-Head of Facebook), and Karina Newton (Instagram’s then-Head of Policy).¹⁷⁴

194. Ms. Gould Stewart described a “PR fire”¹⁷⁵ in mid-October 2019, stemming from “selfie” camera filters on Meta’s platforms that simulated plastic surgery. This included public allegations that Meta was “allowing the promotion of plastic surgery,” including to Instagram’s youngest users.¹⁷⁶

195. Meta’s initial response to the public backlash was to institute a temporary ban on the camera filters.

196. Ms. Gould Stewart recommended that this ban be made permanent,¹⁷⁷ distributing a briefing memo to these senior leaders detailing the “significant concerns” raised by “global wellbeing experts . . . about the impact of these effects on body dysmorphia and eating disorders,”¹⁷⁸ especially for teenage girls.¹⁷⁹

197. The document also noted that a potential option to limit the filters to only users who were 18 years old and

¹⁷⁴ MT-IG-AG-00166909

¹⁷⁵ *Id.* (pg. 20)

¹⁷⁶ *Id.*

¹⁷⁷ MT-IG-AG-00166909 (pg. 19)

¹⁷⁸ MT-IG-AG-00170733 (pg. 1)

¹⁷⁹ MT-IG-AG-00170733 (pg. 3)

older would not be effective because Instagram’s age-gating procedures were inadequate.¹⁸⁰ The briefing memo reminded Meta’s senior leaders that academic researchers had demonstrated that **“Facebook and Instagram use is associated with body image issues and anxiety among users and particularly among women and teenage girls.”**¹⁸¹ The document warned that long term studies of the effects of such filters “likely will not be available before the potentially damaging impact to user wellbeing manifests.”¹⁸²

198. Ms. Newton agreed with the recommendation to continue the ban, expressing concern that these filters were ***“actively encouraging young girls into body dysmorphia[.]”***¹⁸³

199. Ms. Newton further noted that ***“outside academics and experts consulted were nearly unanimous on the harm here.”***¹⁸⁴

200. A meeting with Mr. Zuckerberg to discuss the matter was then scheduled for April 2, 2020, and a “Cosmetic Surgery Effects Pre-Read” document¹⁸⁵ was prepared and circulated in anticipation of that meeting.

¹⁸⁰ MT-IG-AG-00170733 (pg. 4)

¹⁸¹ MT-IG-AG-00170733 (pg. 12) (emphasis in original)

¹⁸² MT-IG-AG-00170733 (pg. 3)

¹⁸³ MT-IG-AG-00166909 (pg. 10) (emphasis added)

¹⁸⁴ *Id.* (emphasis added)

¹⁸⁵ MT-IG-AG-197588; *see also* MT-IG-AG-00170733 [prior version circulated to product leaders before it went up to Zuckerberg]; *see also* MT-IG-AG-00108344 (recommendation presentation re nixing the filters)

201. The “pre-read” detailed Meta’s consultation with “21 independent experts around the world,” finding that “[t]hese extreme cosmetic surgery effects can have severe impacts on both the individuals using the effects and those viewing the images.”¹⁸⁶ Experts told Meta that “[c]hildren are particularly vulnerable” to these impacts, in addition to “those with a history of mental health challenges [and] eating disorders[.]”¹⁸⁷ The memo also included Meta’s review of academic research on the negative effects of edited images on viewers’ satisfaction with their own bodies, as well as evidence that “editing one’s own selfie images could activate desire for cosmetic surgery.”¹⁸⁸

202. In contrast to the experts’ “agree[ment] that these effects are cause for concern for mental health and wellbeing, especially” for women and girls, the memo noted that continuing the ban may have a “negative growth impact” on the company.¹⁸⁹

203. On April 1, 2020, one day before this meeting was to take place, it was canceled.

204. Rather than rescheduling the meeting, Mr. Zuckerberg vetoed the proposal to ban plastic surgery simulation camera filters.

205. Mr. Zuckerberg dismissed concerns about the filters (from the public, from experts, and from his own employees) as “paternalistic.”¹⁹⁰

¹⁸⁶ MT-IG-AG-197588 (pg. 7)

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* (pgs. 1-2)

¹⁹⁰ MT-IG-AG-00198471 (pg. 3)

206. Mr. Zuckerberg stressed that there was a “clear[] demand” for the filters, and wrongly asserted that he had seen “no data” suggesting that the filters were harmful.¹⁹¹

207. In reality, Mr. Zuckerberg had been provided the “pre-read” document, detailing the worldwide expert consensus on “the dangers these filters have in advancing unrealistic beauty standards and impacting mental health and body image[.]”¹⁹² and he continued to receive information from colleagues summarizing the harmful nature of the plastic surgery filters.

208. A follow up memo sent to Mr. Zuckerberg before he gave a final order to end the ban noted that the “cosmetic surgery effects [are] known to be heavily used by teen girls,”¹⁹³ and summarized Meta’s own internal research finding that “[a]mong teen girls that said they felt bad about their bodies, 32% said Instagram made them feel worse.”¹⁹⁴

209. In the final message of the e-mail thread on the matter of the plastic surgery filters, Ms. Gould Stewart wrote to Mr. Zuckerberg, “I respect your call on this and I’ll support it, but want to just say for the record that I don’t think it’s the right call given the risks. . . . I just hope

¹⁹¹ *Id.*; see also MT-IG-AG-00198455

¹⁹² MT-IG-AG-197588 (pg. 7)

¹⁹³ MT-IG-AG-197588 (pg. 6); cf. MT-IG-AG-00200185 [email from Meta research-related employee to Dr. Janis Whitlock (self-injury/social media researcher at Cornell) in November 2019, noting that “many of these fantastical filters are most popular with young people.”]

¹⁹⁴ MT-IG-AG-197588 (pg. 6)

that years from now we will look back and feel good about the decision we made here.”¹⁹⁵

210. Ms. Gould Stewart left Meta in November 2022.¹⁹⁶

211. As of August 2023, these filters remain available on Instagram. Among these filters is “pillow face,” which simulates facial plastic surgery.

212. While Zuckerberg’s decision to stand behind the harmful filters was made hastily and in disregard of expert opinion and the opinion of his own staff, Meta took painstaking measures to hide this information from consumers and avoid press scrutiny and backlash in how it presented this decision.

213. In May 2020, Meta circulated an eight-page document titled “Follow-up: Cosmetic Surgery Effects Execution Plan”, going through various options and their expected “risk for press and policy scrutiny” in detail.¹⁹⁷

214. This document exposes Meta’s pattern of internally adopting harmful policies while externally maintaining a deceptive narrative focused on avoiding scrutiny (the same way that Meta carefully timed its announcement that Meta would not be implementing Daisy as a default setting to avoid scrutiny around mental health awareness month).

215. Beyond these plastic surgery filters, Meta knows that camera filters result in negative appearance comparison. Internal studies shows that with Stories, “**sharing**

¹⁹⁵ MT-IG-AG-00198471 (pg. 1)

¹⁹⁶ <https://www.linkedin.com/in/margaretgstewart> (last visited Jan. 27, 2024).

¹⁹⁷ MT-IG-AG-00198459

or viewing more filtered selfies (i.e., that had a color filter or camera AR effect) was associated with increased negative comparison.”¹⁹⁸ In 2021, Meta researchers recommended that Meta eschew “beautification” filters to help users “maintain[. . .] self esteem.”¹⁹⁹

216. In fact, Meta conducted a focus group of girls and women ages 13-21 in a Bay Area city who use Instagram and who had issues with their self-confidence in March 2020, just a month before Mr. Zuckerberg decided to disregard the expert consensus that allowing plastic surgery filters would be harmful to users’ mental health. The women and girls in the focus group reported that “run-of-the-mill [camera] effects were the most problematic because they (1) were realistic . . . and (2) seemingly attainable[.]”²⁰⁰ The findings of this focus group were never shared publicly.

217. A significant percentage of teen Instagram users who moved more of their time to other social media platforms reported that there was too much pressure to look perfect on Instagram.²⁰¹

218. Despite this feedback from users, Meta considered making “enhancement filters” such as a “skin smoothing” effect a so-called “sticky setting” which would be automatically applied when users opened the camera after having used the filter once.²⁰²

¹⁹⁸ MT-IG-AG-00002779 (pg. 19)

¹⁹⁹ MT-IG-AG-00022634 (pg. 22) (recommendation that filters be limited to fun/interactive ones, not beautification ones)

²⁰⁰ MT-IG-AG-00117959

²⁰¹ MT-IG-AG-00143803 (pg. 3)

²⁰² MT-IG-AG-00215852

219. Similarly, Meta’s WhatsApp and Messengers apps both have native “Face Beauty” modes for video calls.²⁰³ These filters enhance young users’ appearance, making them appear more attractive on video calls.

220. Meta continuously prioritizes engagement (including increasing engagement through promoting NAC) over the safety of its young users, while publicly denying that it does the same.

D. The Challenged Platform Features Have No Relation to Traditional Publishing Activities—Any Content They Utilize Is Distinct From Their Functionality and the Harm They Cause.

221. The State does not challenge or seek to curtail the publishing of any specific type of content by challenging the above-described addicting Design Elements.

222. Notably, these Design Elements—Low-Friction Variable Rewards; Social Manipulation; Ephemeral Content; Push Notifications; and Harmful Filters—are not tethered to any specific third-party content. Indeed, the substance of any content incorporated into or used by the Design Elements is immaterial. Instead, the Design Elements themselves create the risk and harm of addiction, which is separate and apart from other harms caused by the platform.

223. Regardless of the substance of *any* content on Instagram—either first- or third-party—the purpose of

²⁰³ How To Add Filter In Whatsapp Video Call? Add Beauty Filter, <https://gadgetrekt.com/add-filter-whatsapp-video-call/> (last visited Jan. 27, 2024).

the Design Elements is to extract additional time and attention from young users whose developing brains were not equipped to resist those manipulative tactics.

III. META KNOWS THAT ITS ADDICTION-CAUSING DESIGN ELEMENTS WORK AS INTENDED AND THAT INSTAGRAM INDUCES WIDESPREAD COMPULSIVE USE AMONG YOUNG USERS.

224. Because of Meta’s design choices, its platforms—including Instagram—have already hooked a generation of Young Users.

225. Meta knew that Young Users used Instagram at alarming rates.²⁰⁴ It knew that Young Users wanted to reduce their time on Instagram. It knew that desire was overpowered by the platform’s engagement-inducing features. It knew that compulsive use had detrimental effects on Young Users’ mental health, sleep, and relationships. However, since Young Users’ compulsive use benefited Meta’s bottom line, Meta did not take meaningful steps to rescue them from this emerging crisis.

226. For example, in a February 2019 internal presentation titled “Instagram Teen Well-Being Study: US Top-line Findings,” Meta observed that “App Addiction is Common on IG.” The presentation noted that 23% of

²⁰⁴ Under Nevada law, “‘knowingly’ means that the defendant is aware that the facts exist that constitute the act or omission.” *Poole v. Nev. Auto Dealership Invs., LLC*, 2019 Nev. App. LEXIS 4, *2. Similarly, “a ‘knowing[]’ act or omission under the NDTPA does not require that the defendant intend to deceive with the act or omission, or even know of the prohibition against the act or omission, but simply that the defendant is aware that the facts exist that constitute the act or omission.” *Id.* at *8 (alteration original).

teenage monthly active users find that they often feel like they “waste too much time on” Instagram.²⁰⁵

227. In September 2019, Meta commissioned a third-party study on Teen Mental Health. That study’s first “Topline Headline” was that “Instagram is an inevitable and unavoidable component of teens’ lives. Teens can’t switch off from Instagram even if they want to.”²⁰⁶

228. Another “Topline Headline” was that “Teens talk of Instagram in terms of an ‘addicts’ narrative’ spending too much time indulging in a compulsive behavior that they know is negative but feel powerless to resist.”²⁰⁷

229. A later slide observed that “Teens are hooked despite how it makes them feel . . . Instagram is addictive, and time-spend on platform is having a negative impact on mental health.”²⁰⁸

230. The Teen Mental Health report also found that teens “know they stay up later than they should and miss out on sleep to stay plugged in” to Instagram.²⁰⁹

231. Elsewhere, the report noted that “Young Users are acutely aware that Instagram is bad for their mental health yet are compelled to spend time on the app for fear of missing out on cultural and social trends.”²¹⁰

²⁰⁵ MT-IG-AG-00103082 (pg. 37)

²⁰⁶ MT-IG-AG-00103653 (pg. 7)

²⁰⁷ *Id.*

²⁰⁸ *Id.* (pg. 15)

²⁰⁹ *Id.*

²¹⁰ *Id.* (pg. 29)

232. Relatedly, in an October 2019 discussion regarding mental health research, an employee noted that:

[T]eens told us that they don't like the amount of time they spend on the app . . . they often feel 'addicted' and know that what they're seeing is bad for their mental health but feel unable to stop themselves. This makes them not feel like they get a break or can't switch off social media. In the survey, about 30% (and even larger proportions of those who are unsatisfied with their lives) said that the amount of time they spend on social media makes them feel worse.²¹¹

233. Along the same lines, in March 2020, one Instagram employee asked if there were "any recent studies where we explicitly talk about time spent tools and why teens want them."²¹² In response, a different employee confirmed that "[t]he feedback, essentially, is that (1) teens feel addicted to IG and feel a pressure to be present, (2) like addicts, they feel that they are unable to stop themselves from being on IG, and (3) the tools we currently have aren't effective at limiting their time on the ap [sic]."²¹³

234. But despite that survey feedback, Meta made sure not to speak about the concept of "addiction" pub-

²¹¹ MT-IG-AG-00024085

²¹² MT-IG-AG-00171389

²¹³ *Id.*

licly. In that same March 2020 exchange, the two employees discussed a draft public statement regarding “efforts to combat social media addiction.”²¹⁴

235. The first asked: “Do we want to call it addiction? Maybe not.” The second clarified: “(this is internal only).” The first employee responded: “Internal only makes it better. I’m just a little cautious about calling it addiction.” The second responded: “Totally agree, we would never want to say that!”²¹⁵

236. Employees continued to grapple with this issue in September 2020, when Netflix released *The Social Dilemma*, which accused Meta of addicting Young Users to Instagram.

237. That thesis rang true among Meta employees. In one exchange among several Instagram employees, Instagram’s Director of Data Science stated “[by the way] there is a new Netflix [documentary] basically saying we’re creating a world of addicts . . .” In response, a second employee stated that the documentary “makes me feel like tech plays to humans’ inability to have self-control lol.”²¹⁶

238. In response, Instagram’s Director of Data Science stated, “Yeh that’s exactly what the [documentary] says. I think its true [to be honest] . . . I do worry what it does to young users who are still developing their brains and social skills, as well as being more susceptible to mean comments or lack of friends/feedback.”²¹⁷

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ MT-IG-AG-00013316

²¹⁷ *Id.*

239. A third employee asked if Meta was “creating addicts or facilitating them . . . giving existing addicts a really accessible outlet?” The second employee clarified, “a really accessible outlet that optimizes for time spent . . . [and] keeps people coming back even when it stops being good for them.”²¹⁸

240. Instagram’s Director of Data Sciences responded, “without the right stimulus, someone might never become an addict. So it’s a tricky one. **It’s like, you’ll never become a gambling addict if you don’t visit vegas** : P [*sic*]”²¹⁹

241. That same day, Instagram’s Director of Data Science analyzed the scope of the problem, creating charts titled “Number of US Humans who spend a lot of time on IG in a day,”²²⁰ and “US Humans that spend a ton of time on IG in a Week.”²²¹

242. The daily chart showed that in the United States 478,116 teens spend 3-4 hours per day on Instagram; 237,214 spend 4-5 hours; and 306,863 spend five or more hours.²²² The weekly chart showed that in the United States 1,021,961 teens spend 14-21 hours; 429,288 spend 21-28 hours; and 407,354 spend 28 or more hours per week on Instagram.²²³

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ MT-IG-AG-00013260

²²¹ MT-IG-AG-00013261

²²² MT-IG-AG-00013260

²²³ MT-IG-AG-00013261

243. Meta knew that this level of usage was the by-product of its business model and its design choices, and actively hid it from the public. As a Meta Vice President of Product told Instagram’s leadership in February 2021, “problematic use²²⁴ . . . [will] require more fundamental changes to our goals, what type of work they incentive [sic], and therefore how core mechanics work (feed design, ranking, sharing, notifs [*i.e.*, “notifications”]).”²²⁵

244. Internally, Meta understood the specific ways that compulsive use manifested on Instagram. Externally, Meta failed to disclose any of this material information to its users.

245. For example, a November 2021 analysis titled “Well-being: Problematic Use” showed that “more reliable proxies for identifying problematic use” included: “‘passive’ consumption, frequent low-engagement sessions, disproportionate night-time usage, repetitive app checking, and receiving and responding to more push notifications.”²²⁶

246. That same analysis also acknowledged that “problematic use” was “more common among teens and people in their 20s.” It explained: “this is consistent with young people having problems with self-regulation.”²²⁷ Once again, publicly, Defendants said nothing.

²²⁴ “Problematic Use” is a euphemism that Meta uses internally to describe excessive or compulsive social media use.

²²⁵ MT-IG-AG-00176694

²²⁶ MT-IG-AG-00210347

²²⁷ *Id.*

A. Meta Harms Young Users by Inducing Compulsive Use.

247. Defendants have substantially injured Young Users by designing their platforms, including Instagram, to induce compulsive and excessive use, which interferes with important developmental processes and behaviors.

248. These injuries include Young Users' lack of sleep and related health outcomes, diminished in-person socialization skills, reduced attention, increased hyperactivity, self-control challenges and interruption of various brain development processes.

1. Mental Health Harms

249. Maximizing children's time and activities online is linked with worse psychological well-being in children in concrete and serious ways that cannot be ignored in the context of the current youth mental health crisis. Defendants have caused Young Users to experience mental health harms, such as increased levels of depression and anxiety. In addition, Defendants have caused Young Users to have diminished social capacity and other developmental skills by virtue of the "opportunity cost" associated with devoting significant time to social media, rather than partaking in other developmentally important, in-person life experiences.

250. The United States Surgeon General's May 2023 Advisory, titled "Social Media and Youth Mental Health" (the "Advisory"), describes some of the harms caused by Defendants.²²⁸ As the Advisory explains, "[a] Surgeon

²²⁸ U.S. Dep't of Health & Hum. Servs., *Social Media and Youth Mental Health: The U.S. Surgeon General's Advisory* 4 (2023), <https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf> (last visited Jan. 27, 2024).

General's advisory is a public statement that calls the American people's attention to an urgent public health issue . . . Advisories are reserved for significant public health challenges that require the nation's immediate awareness and action."²²⁹ According to the Surgeon General, Young Users' social media use is one such significant public health challenge.

251. As the Advisory explains, "[e]xcessive and problematic social media use, such as compulsive or uncontrollable use, has been linked to sleep problems, attention problems, and feelings of exclusion among adolescents."²³⁰

252. The Advisory also identifies "changes in brain structure," "altered neurological development," "depressive symptoms, suicidal thoughts, and behaviors," "attention deficit/hyperactivity disorder (ADHD)," and "depression, anxiety and neuroticism," as additional harms to Young Users associated with compulsive social media use.²³¹

253. In internal discussions, Meta employees discuss the fact that Meta's social media platform design (including Instagram's design) tends to pull young users into "negative spirals" and "feedback loops" whereby the algorithmic sequencing of content has detrimental effects on the well-being of young users. Publicly, Defendants have never shared this information.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ To be clear, this Complaint is focused on harms arising out of compulsive or "problematic" platform use, not harms caused by exposure to any individual, specific pieces or categories of content on Defendants' platforms.

254. For example, in one internal communication discussing potential “[c]ontent policies” for the unlaunched “Instagram Youth” platform, Meta employees expressed concern with the “well-being challenge” of “content on IG triggering negative emotions among tweens and impacting their mental well-being (and) our ranking algorithms taking into negative spirals & feedback loops that are hard to escape.”²³²

255. By serving content to young users according to variable reward schedules (discussed *supra*), Meta manipulates dopamine releases in its young users, inducing them to engage repeatedly with its platforms—much like a gambler at a slot machine.

256. Internal Meta documents reveal Meta knew its Design Elements trigger intermittent dopamine releases in young users, whose developing brains are especially susceptible to such tactics.

257. For example, a 2020 internal Meta presentation describes Meta’s efforts to study adolescent biology and neuroscience in order to “gain valuable unchanging insights to inform product strategy today,” noting that “teens’ decisions and behavior are mainly driven by emotion, the intrigue of novelty and reward.” The document continues, “teens are insatiable when it comes to ‘feel good’ dopamine effects” and “IG has a pretty good hold on the serendipitous aspect of discovery through our Explore surface, recommendations and social graph. And every time one of our teen users finds something unexpected their brains deliver them a dopamine hit.”²³³

²³² MT-IG-AG-00090291

²³³ MT-IG-AG-00231711 (pg. 22)

258. Two years earlier, in June 2018, an internal presentation recognized that “[i]t may be a problem if Facebook seems rewarding [to users] based on the principle of unpredictability, while the inherent value of the reward is lacking.”²³⁴ This includes “[n]otifications with little or no relevance, and that come at unpredictable times,” “[p]rominent novel content that creates unwanted distractions,” “[n]ews feed stories with seemingly ‘random’ content and unpredictable order,” and “[o]ther use of unpredictable rewards, such as delays to load.”²³⁵ The same document cautioned that dopamine “rewards available through Facebook may contribute to problems for some people.”²³⁶

259. In 2020, a longitudinal study investigated whether “Facebook Addiction Disorder” predicted suicide-related outcomes and found that children and adolescents addicted to Facebook are more likely to engage in self-injurious behavior, such as cutting and suicide.²³⁷ Other studies examining the link between these increases found that adolescents who spent more time on screen ac-

²³⁴ MT-IG-AG-00312902 (pg. 23)

²³⁵ *Id.*

²³⁶ *Id.* (pg. 22)

²³⁷ See, e.g., Julia Brailovskaia et al., *Positive mental health mediates the relationship between Facebook addiction disorder and suicide-related outcomes: a longitudinal approach*, 00(00) *Cyberpsychology, Behavior, and Social Networking* (2020), <https://doi.org/10.1089/cyber.2019.0563> (last visited Jan. 27, 2024); Jean M. Twenge, et al., *Increases in Depressive Symptoms, Suicide-Related Outcomes, and Suicide Rates Among U.S. Adolescents After 2010 and Links to Increased New Media Screen Time*, 6 *Clinical Psych. Sci.* 3–17 (2017), <https://doi.org/10.1177/2167702617723376> (last visited Jan. 27, 2024).

tivities were significantly more likely to have high depressive symptoms or have at least one suicide-related outcome, and that the highest levels of depressive symptoms were reported by adolescents with high social media use and fewer in-person social interactions.²³⁸

260. Fueled by social media addiction, youth suicide rates are up an alarming 57%.²³⁹ In the decade leading up to 2020, there was a 40% increase in high school students reporting persistent sadness and hopelessness,²⁴⁰ and a 36% increase in those who attempted to take their own lives. In 2019, one in five high school girls had made a suicide plan.²⁴¹ By 2018, suicide was the second leading cause of death for youth ages 10–24.²⁴²

²³⁸ Jean M. Twenge, et al., *Increases in Depressive Symptoms, Suicide-Related Outcomes, and Suicide Rates Among U.S. Adolescents After 2010 and Links to Increased New Media Screen Time*, 6 *Clinical Psych. Sci.* 3–17 (2017), <https://doi.org/10.1177/2167702617723376> (last visited Jan. 27, 2024); see also Anthony Robinson et al, *Social comparisons, social media addiction, and social interaction: An examination of specific social media behaviors related to major depressive disorder in a millennial population*, *Journal of Applied Biobehavioral Research* (Jan. 8, 2019), <https://doi.org/10.1111/jabr.12158> (last visited Jan. 27, 2024).

²³⁹ *Protecting Youth Mental Health: The U.S. Surgeon General's Advisory* at 8, U.S. Dep't of Health & Hum. Servs. (Dec. 7, 2021), <https://www.hhs.gov/sites/default/files/surgeon-general-youth-mental-health-advisory.pdf> (last visited Jan. 27, 2024).

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *AAP-AACAP-CHA Declaration of a National Emergency in Child and Adolescent Mental Health*, *Am. Acad. Pediatrics* (Oct. 19, 2021), <https://www.aap.org/en/advocacy/child-and-adolescent-healthy-mental-development/aap-aacap-cha-declaration-of-a-national->

261. Because of this shortage of psychiatrists and the extent of the youth mental health crisis fueled by social media addiction, the number of teens and adolescents waiting in emergency rooms for mental health treatment for suicide nationwide tripled from 2019 to 2021.²⁴³

2. Harm to Body Image

259. Design features that maximize time spent on social media can also lead to heightened exposure to negative body image-related content, which increases children's susceptibility to poor body image and, consequently, disordered eating. A study of data from 7th and 8th graders published in 2019 in the *International Journal of Eating Disorders* "suggest[ed] that [social media], particularly platforms with a strong focus on image posting and viewing, is associated with elevated [disordered eating] cognitions and behaviors in young adolescents."²⁴⁴ In another study, researchers found a positive correlation

emergency-in-child-and-adolescent-mental-health/ (last visited Jan. 27, 2024).

²⁴³ Stephen Stock, et al., *Children languish in emergency rooms awaiting mental health care*, CBS News (Feb. 27, 2023, 8:02 am), <https://www.cbsnews.com/news/emergency-rooms-children-mental-health/> (last visited Jan. 27, 2024).

²⁴⁴ Simon M. Wilksch, et al., *The Relationship Between Social Media Use and Disordered Eating in Young Adolescents*, 53 Int. J. Eat. Disord. 96, 104 (2020).

between higher Instagram use and orthorexia nervosa diagnoses.²⁴⁵ Personal stories from sufferers of disordered eating have highlighted the link to social media.²⁴⁶

260. Time spent on social media can harm children's body image and increase their susceptibility to disordered eating in multiple ways. First, visual social media platforms trigger social comparison as children compare their appearance to others, including influencers. For example, an exploratory study performed internally at Meta concluded that 66% of teen girls on Instagram experienced negative social comparison, and 52% of those who experienced negative social comparison attributed this experience to viewing images on the platform that were related to beauty.²⁴⁷ None of these findings was shared with the public.

261. The documents Frances Haugen shared with the *Wall Street Journal* in 2021 revealed that Facebook has

²⁴⁵ Pixie G. Turner & Carmen E. Lefevre, *Instagram Use Is Linked to Increased Symptoms of Orthorexia Nervosa*, 22 *Eating Weight Disorders* 277, 281 (2017).

²⁴⁶ See, e.g., Jennifer Neda John, *Instagram Triggered My Eating Disorder*, *Slate* (Oct. 14, 2021), <https://slate.com/technology/2021/10/instagram-social-media-eating-disorder-trigger.html> (last visited Jan. 27, 2024); Clea Skopeliti, *'I Felt My Body Wasn't Good Enough': Teenage Troubles with Instagram*, *The Guardian* (Sept. 18, 2021), <https://www.theguardian.com/society/2021/sep/18/i-felt-my-body-wasnt-good-enough-teenage-troubles-with-instagram> (last visited Jan. 27, 2024).

²⁴⁷ *Spence v. Meta Platforms*, N.D. Cal. Case No. 3:22-cv-03294 at 9 (June 6, 2022) (citing Facebook Papers: "Teen Girls Body Image and Social Comparison on Instagram—An Exploratory Study in the US" (March. 2020), at p. 8).

been aware at least since 2019 that “[w]e make body image issues worse for one in three teen girls.”²⁴⁸ Haugen has explained how this becomes a vicious feedback cycle for children: they feel bad about themselves so they go to social media for distraction in order to self-soothe, only to end up seeing the type of posts that led to their anxiety in the first place.²⁴⁹ Negative self-comparison on social media is experienced by cisgender girls and boys; specifically, boys feel pressure to lose weight and build muscle as a result of the muscular men they see on Instagram, TikTok, and YouTube. Eliot, a 17-year-old, told the *New York Times*, “Girls discuss those pressures more, but it’s completely the same for boys.”²⁵⁰

262. Second, platforms use algorithms to deliver content related to topics or themes that the platform believes will maximize a user’s time spent on the platform. These recommendation systems create “bubbles” or “rabbit holes” of content around a specific theme and also expose

²⁴⁸ Georgia Wells, et al., *Facebook Knows Instagram Is Toxic for Teen Girls, Company Documents Show*, W.S.J. (Sept. 14, 2021), <https://www.wsj.com/articles/facebook-knows-instagram-is-toxic-for-teen-girls-company-documents-show-11631620739> (last visited Jan. 27, 2024)

²⁴⁹ Allison Slater Tate, *Facebook Whistleblower Frances Haugen Says Parents Make 1 Big Mistake with Social Media*, TODAY (Feb. 7, 2022, 7:06 PM EST), <https://www.today.com/parents/teens/facebook-whistleblower-frances-haugen-rcna15256> (last visited Jan. 27, 2024).

²⁵⁰ Alex Hawgood, *What Is ‘Bigorexia’?*, N.Y. Times (Mar. 5, 2022, updated May 17, 2022), <https://www.nytimes.com/2022/03/05/style/teen-bodybuilding-bigorexia-tiktok.html> (last visited Jan. 27, 2024).

users to increasingly extreme content on a given topic.²⁵¹ This has proven true for negative body image and pro-eating disorder content.²⁵² Indeed, research shows that social media platforms' content selection algorithms have pushed disordered eating and harmful diet techniques to teenage girls.²⁵³ Girls who express an interest in dieting or dissatisfaction with their looks are bombarded with content targeted to these insecurities and often pushed to more extreme content such as pro-anorexia posts and videos. And because platforms know teenage girls disproportionately engage with this type of content,²⁵⁴ even minor users who do not express interest in these topics are often delivered this content.

263. The harm that social media does to children's body image and eating habits has been widely discussed in public discourse in recent months, but even as of the filing of this Action, content depicting disordered eating

²⁵¹ Fairplay, *Designing for Disorder: Instagram's Pro-eating Disorder Bubble* at 1 (Apr. 2022), https://fairplayforkids.org/wp-content/uploads/2022/04/designing_for_disorder.pdf (last visited Jan. 27, 2024); *Inside TikTok's Algorithm: A WSJ Video Investigation*, W.S.J. (July 21, 2021), <https://www.wsj.com/articles/tiktok-algorithm-video-investigation-11626877477> (last visited Jan. 27, 2024).

²⁵² Fairplay, *Designing for Disorder: Instagram's Pro-eating Disorder Bubble* at 6-7 (Apr. 2022), https://fairplayforkids.org/wp-content/uploads/2022/04/designing_for_disorder.pdf (last visited Jan. 27, 2024).

²⁵³ See generally *id.*; Jim Waterson & Alex Hern, *Instagram 'Pushes Weight-Loss Messages to Teenagers'*, *The Guardian* (Jul 19, 2021, 7:01 AM), <https://www.theguardian.com/society/2021/jul/20/instagram-pushes-weight-loss-messages-to-teenagers> (last visited Jan. 27, 2024).

²⁵⁴ See Fabrizio Bert et al., *Risks and Threats of Social Media Websites: Twitter and the Proana Movement*, 19 *Cyberpsychology, Behav. Soc. Networking* (Apr. 2016), <https://pubmed.ncbi.nlm.nih.gov/26991868/> (last visited Jan. 27, 2024).

remains widely available to children and profitable to platforms,²⁵⁵ and even popular among teens, who are exposed to more of it as they spend more time online.

3. “Problematic” Internet Use

264. Maximizing time and activities online also fosters “problematic internet use”—psychologists’ term for excessive internet activity that exhibits addiction, impulsivity, or compulsion.²⁵⁶ Indeed, the design features discussed in this Action plainly impede children’s ability to put their devices down, even when they want to use them less. For example, a high school student told Common Sense Media,

One of the challenges I face with social media is getting off it. Once I get on, I have to really force myself off it because it’s so addictive. All I’m doing is scrolling, but I’m subconsciously looking for an end so I can feel accomplished. But the scrolling never stops.²⁵⁷

265. Problematic internet use, in turn, is linked to a host of additional problems. For example, in one study of 564 children between the ages of 7 and 15 spearheaded by

²⁵⁵ Fairplay, *Designing for Disorder: Instagram’s Pro-eating Disorder Bubble* (Apr. 2022), https://fairplayforkids.org/wp-content/uploads/2022/04/designing_for_disorder.pdf (last visited Jan. 27, 2024).

²⁵⁶ Chloe Wilkinson, et al., *Screen Time: The Effects on Children’s Emotional, Social, and Cognitive Development* at 6 (2021), <https://informedfutures.org/screen-time/> (last visited Jan. 27, 2024).

²⁵⁷ Katie Joseff, *Social Media Is Doing More Harm than Good*, Common Sense Media (Dec. 17, 2021), <https://www.commonsensemedia.org/kids-action/articles/social-media-is-doing-more-harm-than-good> (last visited Jan. 27, 2024).

the Child Mind Institute in New York, researchers found that problematic internet use was positively associated with depressive disorders, Attention Deficit Hyperactivity Disorder, general impairment, and increased sleep disturbances.²⁵⁸ A meta-analysis of peer-reviewed studies involving cognitive findings associated with problematic internet use in both adults and adolescents found “firm evidence that PIU . . . is associated with cognitive impairments in motor inhibitory control, working memory, Stroop attentional inhibition and decision-making.”²⁵⁹ Another study of over 11,000 European adolescents found that among teens exhibiting problematic internet use, 33.5% reported moderate to severe depression; 22.2% reported self-injurious behaviors such as cutting; and 42.3% reported suicidal ideation.²⁶⁰ The incidence of attempted suicide was also ten times higher for teens exhibiting problematic internet use than their peers who exhibited healthy internet use.²⁶¹

²⁵⁸ Restrepo, et al., *Problematic Internet Use in Children and Adolescents: Associations with Psychiatric Disorders and Impairment*, 20 BMC Psychiatry 252 (2020), <https://doi.org/10.1186/s12888-020-02640-x> (last visited Jan. 27, 2024).

²⁵⁹ Konstantinos Ioannidis, et al., *Cognitive Deficits in Problematic Internet Use: Meta-Analysis of 40 Studies*, 215 British Journal of Psychiatry 639, 645 (2019), <https://pubmed.ncbi.nlm.nih.gov/30784392/> (last visited Jan. 27, 2024).

²⁶⁰ Michael Kaess, et al., *Pathological Internet use among European adolescents: psychopathology and self-destructive behaviours*, 23 Eur. Child & Adolescent Psychiatry 1093, 1096 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4229646/> (last visited Jan. 27, 2024).

²⁶¹ *Id.*

4. Harm to Physical Health

266. Meta knew that Instagram’s core mechanics were interfering with a critical part of Young Users’ development—sleep. For example, in an April 2021 analysis, Meta observed that “peak” hours for messaging were “in the late evenings,” with the highest rate of “sessions with message sends” occurring between 9-11pm.²⁶² That same analysis showed that on weekdays, U.S. teens spent the most time on Instagram between 9-11pm.²⁶³

267. After reviewing that information, a Meta data scientist commented, “Honestly the only insight I see in these charts is that teens are really into using IG at 11pm when they should probably be sleeping : (”²⁶⁴

268. Maximizing children’s time spent online at the expense of sleep or movement also harms children’s physical health.

269. When children are driven to spend more time online, they sleep less—because it is impossible to be online and sleep at the same time, because stimulation before bedtime disrupts sleep patterns, and because many of the design features discussed in this Action make users feel pressured to be connected constantly, and that feeling doesn’t always go away at nighttime. Indeed, research shows that children who exhibit problematic internet use often suffer from sleep problems.²⁶⁵

²⁶² MT-IG-AG-00017116

²⁶³ MT-IG-AG-00017107

²⁶⁴ *Id.* (pg. 7)

²⁶⁵ Restrepo, et al., *Problematic Internet Use in Children and Adolescents: Associations with Psychiatric Disorders and Impairment*,

270. One-third of teens say that at least once per night, they wake up and check their phones for something other than the time, such as to check their notifications or social media.²⁶⁶

271. Some teens set alarms in the middle of the night to remind them to check their notifications or complete video game tasks that are only available for a limited time.²⁶⁷

272. In addition, screen time before bed is known to inhibit academic performance in children.²⁶⁸

273. Teenagers who use social media for more than five hours per day are about 70% more likely to stay up late on school nights.²⁶⁹

274. A lack of sleep among teenagers has been linked to inability to concentrate, poor grades, drowsy-driving

20 BMC Psychiatry 252 (2020), <https://doi.org/10.1186/s12888-020-02640-x> (last visited Jan. 27, 2024).

²⁶⁶ Common Sense, *Screens and Sleep: The New Normal: Parents, Teens, Screens, and Sleep in the United States* at 7 (2019), <https://www.common sense media.org/sites/default/files/research/report/2019-new-normal-parents-teens-screens-and-sleep-united-states-report.pdf> (last visited Jan. 27, 2024).

²⁶⁷ Emily Weinstein & Carrie James, *Behind Their Screens: What Teens Are Facing (And Adults Are Missing)*, MIT Press, at 31 (2022).

²⁶⁸ Chloe Wilkinson, et al., *Screen Time: The Effects on Children's Emotional, Social, and Cognitive Development* at 6 (2021), <https://informed futures.org/screen-time/> (last visited Jan. 27, 2024).

²⁶⁹ *Heavy Social Media Use Linked to Poor Sleep*, BBC News (Oct. 23, 2019), <https://www.bbc.com/news/health-50140111> (last visited Jan. 27, 2024).

incidents, anxiety, depression, thoughts of suicide, and even suicide attempts.²⁷⁰

275. Decades of research have shown that more time online is consistently correlated with children's risk of obesity, which in turn increases their risk of serious illnesses like diabetes, high blood pressure, heart disease, and depression.²⁷¹ Spending time online displaces time when children could be engaging in physical activity.²⁷² Further, when children spend more time online, they are exposed to more advertisements for unhealthy products,²⁷³ which are heavily targeted toward children.²⁷⁴ In addition, poor sleep quality—which, as discussed above, is associated with problematic internet use—increases the risk of childhood obesity by 20%.²⁷⁵ Broadly, the harms of

²⁷⁰ Among teens, sleep deprivation an epidemic, Stanford News Ctr. (Oct. 8, 2015), <https://med.stanford.edu/news/all-news/2015/10/among-teens-sleep-deprivation-an-epidemic.html> (last visited Jan. 27, 2024).

²⁷¹ Jeff Chester, et al., *Big Food, Big Tech, and the Global Childhood Obesity Pandemic* at 3 (2021), <https://democraticmedia.org/assets/resources/fullreport.pdf> (last visited Jan. 27, 2024).

²⁷² E de Jong, et al., *Association Between TV Viewing, Computer Use and Overweight, Determinants and Competing Activities of Screen Time in 4- to 13-Year-Old Children*, 37 Int'l J. Obesity 47, 52 (2013), <https://pubmed.ncbi.nlm.nih.gov/22158265/> (last visited Jan. 27, 2024).

²⁷³ *Id.*

²⁷⁴ Jeff Chester, et al., *Big Food, Big Tech, and the Global Childhood Obesity Pandemic* at 3 (2021), <https://democraticmedia.org/assets/resources/fullreport.pdf> (Last visited Jan. 27, 2024).

²⁷⁵ Yanhui Wu, et al., *Short Sleep Duration and Obesity Among Children: A Systematic Review and Meta-Analysis of Prospective Studies*, 11 Obesity Rsch. & Clinical Prac. 140, 148 (2015), <https://pubmed.ncbi.nlm.nih.gov/27269366/> (last visited Jan. 27, 2024); Michelle A.

social media use include increased rates of major depressive episodes, anxiety, eating disorders, body image problems, sleep disturbances, suicidal ideation, and suicide attempts.²⁷⁶

5. Privacy Harms

270. Design features that maximize children's time and activities online also exacerbate privacy harms. Like all users, children are tracked as they engage in online activities.²⁷⁷ Data about what children do online is collected by a vast network that includes platforms, marketers, and third-party data brokers all over the world that use the information apps, websites, and other services collect and retain about children to profile them, make predictions about their choices, and influence their behavior. Children do not developmentally understand digital privacy. The constant surveillance they are subjected to as a result of these techniques is manipulative, limits creativity and

Miller et al., *Sleep Duration and Incidence of Obesity in Infants, Children, and Adolescents: A Systematic Review and Meta-Analysis of Prospective Studies*, 41 *Sleep* 1, 15 (2018), <https://pubmed.ncbi.nlm.nih.gov/29401314/> (last visited Jan. 27, 2024).

²⁷⁶ See, e.g., Jonathan Haidt & Jean Twenge, *Social Media and Mental Health: A Collaborative Review*, (New York University, unpublished manuscript), tinyurl.com/SocialMediaMentalHealthReview (last visited Jan. 27, 2024); Jacqueline Nesi et al., *Handbook of Adolescent Digital Media Use and Mental Health*, Cambridge Univ. Press (2022).

²⁷⁷ See, e.g., Reyes, et al., "Won't Somebody Think of the Children?" *Examining COPPA Compliance at Scale*, 3 *Proceedings on Privacy Enhancing Technologies* 63, at 77 (2018), <https://petsymposium.org/2018/files/papers/issue3/popets-2018-0021.pdf> (finding that out of 5,855 child-directed apps, roughly 57% were collecting personal information in potential violation of the Children's Online Privacy Protection Act) (last visited Jan. 27, 2024).

experimentation, and perpetuates discrimination, substantially harming children and teens.

271. Invasion of privacy has been recognized as a common law tort for over a century. *See Matera v. Google Inc.*, 15-CV-0402, 2016 WL 5339806, at *10 (N.D. Cal, Sept. 23, 2016) (citing Restatement (Second) of Torts §§ 652A-I for the proposition that “the right to privacy was first accepted by an American court in 1905, and ‘a right to privacy is now recognized in the great majority of the American jurisdictions that have considered the question’”); *see also*, Restatement (Second) of Torts § 652B and defining an intrusion claim as follows: “One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.”

272. As Justice Brandeis explained in his seminal article, *The Right to Privacy*, “[t]he common law secures to each individual the right of determining, ordinarily, to what extent his thoughts, sentiments, and emotions shall be communicated to others.” Samuel D. Warren & Louis Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 198 (1890). The Supreme Court similarly recognized the primacy of privacy rights, explaining that the Constitution operates in the shadow of a “right to privacy older than the Bill of Rights.” *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965).

273. More recently, the Supreme Court explicitly recognized the reasonable expectation of privacy an individual has in her cell phone, and the Personal Data generated therefrom, in its opinion in *Carpenter v. United States*, 138 S. Ct. 2206 (2018). There, the Court held that contin-

ued access of an individual’s cell phone location data constituted a search under the Fourth Amendment because “a cell phone—almost a “feature of human anatomy[.]”—tracks nearly exactly the movements of its owner . . . A cell phone faithfully follows its owner beyond public thoroughfares and into private residences, doctor’s offices, political headquarters, and other potentially revealing locales . . . Accordingly, when the Government tracks the location of a cell phone it achieves near perfect surveillance, as if it had attached an ankle monitor to the phone’s user.” *Id.* at 2218 (internal citations omitted).

274. And, even more recently, the Northern District of California, in an order denying a motion to dismiss an intrusion upon seclusion claim for the exfiltration of children’s personal data in different mobile apps, held that “current privacy expectations are developing, to say the least, with respect to a key issue raised in these cases—whether the data subject owns and controls his or her personal information, and whether a commercial entity that secretly harvests it commits a highly offensive or egregious act.” *McDonald v. Kiloo ApS*, 385 F. Supp.3d 1022, 1035 (N.D. Cal. 2019). The *McDonald* court’s reasoning was subsequently adopted in the District of New Mexico in analogous litigation. *See New Mexico ex rel. Balderas v. Tiny Lab Prods.*, 457 F. Supp. 3d 1103, 1127 (D.N.M. 2020), *on reconsideration*, No. 18-854 MV/JFR, 2021 WL 354003 (D.N.M. Feb. 2, 2021).

275. It is precisely because of Instagram’s capacity for “near perfect surveillance” that courts have consistently held that time-honored legal principles recognizing a right to privacy in one’s affairs naturally apply to online monitoring. Defendants’ unlawful intrusion into their minor users’ privacy is made even more egregious and offensive by the fact that the Defendants are targeting and collecting *children’s* information, without obtaining parental

consent. The conduct described herein violates children's expectations of privacy, as well as a parent's inherent right to protect his or her child and set the parameters of what, when, and how information pertaining to the child will be obtained. Parents' interest in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by society. The history of Western civilization reflects a strong tradition of parental concern for the nurture and upbringing of children in light of children's vulnerable predispositions. Our society recognizes that parents should maintain control over who interacts with their children and how, in order to ensure the safe and fair treatment of their children.

6. Risk to Physical Safety

276. Finally, Defendants' platform provides fertile ground for child predators. In November 2019, the National Center on Sexual Exploitation partnered with DC-based, survivor-led service organization Courtney's House, Australia's Collective Shout, and Canada's Defend Dignity to launch #WakeUpInstagram, a campaign calling out Instagram for facilitating child sexual abuse, sex trafficking, and the grooming of young children on its platform.²⁷⁸

277. In May 2021, the child protection non-profit Thorn published quantitative research, based on data collected in 2020.²⁷⁹ According to this report, Instagram

²⁷⁸ <https://endsexualexploitation.org/articles/joint-international-campaign-launched-to-wakeupinstagram-to-sexual-exploitation-on-its-platform/> (last visited Jan. 27, 2024).

²⁷⁹ Thorn, *Responding to Online Threats: Minors' Perspectives on Disclosing, Reporting, and Blocking Findings from 2020 quantitative research among 9–17 year olds*, (May 2021),

ranked at the top among platforms for various harms caused to minors. Thorn found the following regarding harm on Instagram:

- 26% of surveyed minors reported having had a potentially harmful online experience through Instagram (tied with Snapchat for the highest percentage).
- Instagram tied with Snapchat again as most popular platforms where the most survey participants said they have had an online sexual interaction (16% of all respondents). Sexually explicit interaction could include being asked to send a nude photo or video, go ‘on cam’ with a sexually explicit stream, being sent a sexually explicit photo (of themselves or another child), or sexually explicit messages, etc.
- Of those who use Instagram at least once a day, 22% reported experiencing a sexually explicit interaction on the platform (second only to Snapchat at 23%).
- Most disturbing, Thorn notes that among the most used platforms, Instagram (together with Snapchat) appears to host the highest concentration of sexually explicit interactions between minors and adults (13% of users).
- Teenage girls, who are particularly vulnerable to online sexual interactions, have the majority of

these experiences on Instagram (21%) and Snapchat (21%)—mirroring the experience of minors overall.

278. Instagram is uniquely positioned to place children in contact with predators, without the knowledge of their parents, and to date, they have operated with flagrant disregard for the safety of their child users.

IV. META ENGAGES IN DECEPTIVE CONDUCT BY OMITTING AND MISREPRESENTING MATERIAL FACTS ABOUT INSTAGRAM.

279. Under the NDTPA, a business engages in deceptive conduct when its acts, statements, or omissions have a capacity or tendency to deceive whether that is intentional or not.²⁸⁰

280. For years, Meta has led reasonable consumers, parents, and guardians to believe its platforms are safer and less harmful than they truly are. Meta deceived consumers, parents, and guardians by failing to disclose that Instagram is, on balance, harmful to consumers—and especially damaging to Young Users, particularly young women—by concealing information about some of its most popular platform features, by promoting misleading metrics about platform safety, and by touting inaccurate and ineffective “well-being” initiatives, among other methods.

A. Meta Did Not Disclose Its Knowledge That Instagram Harms Users, Particularly Young Women.

281. Defendants have long known that their platforms are likely harming a significant portion of its user-base.

²⁸⁰ *Poole v. Nev. Auto Dealership Invs., LLC*, 2019 Nev. App. LEXIS 4.

282. For instance, in September and October of 2018, Meta surveyed and interviewed active Instagram users to gauge the association between Instagram and “negative social comparison.” In Meta researchers’ own words, the experiment found that “***at least some of this association is causal.***”²⁸¹

283. Knowing that “[n]egative social comparison is associated with worsened well-being measures across the board,”²⁸² Meta found that for Instagram users, “there is a relationship between tenure and the length of negative [social comparison].”²⁸³ For instance, among Instagram users who have been on the platform for 4.4 years, Meta found that “33% of people hav[e] been feeling worse about themselves on [Instagram] for ‘several months to a year.’”²⁸⁴

284. That study also found that Instagram drives negative social comparison for teen girls and young women especially. It observed that, in comparison to men who are at least 25 years old, women are five times more likely and teen girls are eight times more likely to engage in negative social comparison due to Instagram use.²⁸⁵

285. Meta continued sharpening its internal understanding of the harms experienced by Instagram users over subsequent years., never once sharing its insights

²⁸¹ MT-IG-AG-00114075 (pg. 42)

²⁸² *Id.* (pg. 41)

²⁸³ *Id.* (pg. 46)

²⁸⁴ *Id.*

²⁸⁵ *Id.* (pg. 24)

with the public or with consumers of its products. For instance, Meta knew that Instagram caused or contributed to:

Addiction. Meta research from August and September 2019 found that “Instagram is addictive, and time-spend on [the] platform is having a negative impact on mental health.” The research observed that teens “have an addicts’ narrative about Instagram use . . . they wish they could spend less time caring about it, but they can’t help themselves.” The research concluded, “[o]n an every-day level, Instagram is a recipe for low level mental anxiety that unchecked can ladder up to something more serious.”²⁸⁶

Body Dissatisfaction. On March 13, 2020, Meta internally distributed findings from a Meta-sponsored literature review which found that “[s]ubstantial evidence suggests that experiences on Instagram or Facebook make body dissatisfaction worse,” and that users “perceived body image as a problem that Instagram worsened the most, more than when they end a relationship or lose a job.”²⁸⁷

Suicide and Suicidal Ideation. In 2020, a longitudinal study investigated whether “Facebook Addiction Disorder” predicted suicide-related outcomes and found that children and adolescents addicted to Facebook are more likely to engage in

²⁸⁶ MT-IG-AG-00103653 (pgs. 15; 57)

²⁸⁷ MT-IG-AG-00056979 (pgs. 1-2)

self-injurious behavior, such as cutting and suicide.²⁸⁸ Other studies examining the link between these increases found that adolescents who spent more time on screen activities were significantly more likely to have high depressive symptoms or have at least one suicide-related outcome, and that the highest levels of depressive symptoms were reported by adolescents with high social media use and fewer in-person social interactions.²⁸⁹

Negative Social Comparison. In March and April of 2020, Meta conducted a survey of 100,000 individuals in the United States and other countries to better understand “social comparison on Instagram.” From this survey, Meta found that “[a]bout 1 out of 10 people experience negative social comparison on Instagram often or always.”²⁹⁰

²⁸⁸ See, e.g., Julia Brailovskaia et al., *Positive mental health mediates the relationship between Facebook addiction disorder and suicide-related outcomes: a longitudinal approach*, 00(00) *Cyberpsychology, Behavior, and Social Networking* (2020), <https://doi.org/10.1089/cyber.2019.0563> (last visited Jan. 27, 2024); Jean M. Twenge et al., *Increases in Depressive Symptoms, Suicide-Related Outcomes, and Suicide Rates Among U.S. Adolescents After 2010 and Links to Increased New Media Screen Time*, 6 *Clinical Psych. Sci.* 3–17 (2018).

²⁸⁹ Jean M. Twenge, et al., *Increases in Depressive Symptoms, Suicide-Related Outcomes, and Suicide Rates Among U.S. Adolescents After 2010 and Links to Increased New Media Screen Time*, 6 *Clinical Psych. Sci.* 3–17 (2017), <https://doi.org/10.1177/2167702617723376> (last visited Jan. 27, 2024); see also Anthony Robinson, et al., *Social comparisons, social media addiction, and social interaction: An examination of specific social media behaviors related to major depressive disorder in a millennial population*, *Journal of Applied Biobehavioral Research* (Jan. 8, 2019), <https://doi.org/10.1111/jabr.12158> (last visited Jan. 27, 2024).

²⁹⁰ MT-IG-AG-00002779 (pg. 6)

Mental Health Harms. On November 13, 2019, Meta internally published the results of a 22,000-person survey of Instagram users from the United States and several other countries. The survey found that “at least 1 in 2 [Instagram] users had experienced at least one mental health related issue in the last 30 days.”²⁹¹

286. Meta appreciated that Instagram was particularly devastating for young women. Meta’s research showed that:

- “Nearly half of teen girls (48%) often or always compare their appearances on [Instagram], and one-third (34%) feel intense pressure to look perfect.”²⁹²
- “Approximately 70% of teen girls may see enough “sensitive content”—*i.e.*, content that is associated with negative appearance comparison—that they are likely to experience “appearance comparison at least half the time” they are on Instagram.”²⁹³
- The topics that elicit appearance comparison comprise 1/4 of the content people see on Instagram, and 1/3 for teen girls.”²⁹⁴
- “For every piece of friend content a teen girl sees, she sees 5x as many pieces of content from top accounts,” *i.e.* the accounts that most strongly drive appearance comparison.”²⁹⁵

²⁹¹ MT-IG-AG-00056857 (pg. 5)

²⁹² MT-IG-AG-00002821.

²⁹³ MT-IG-AG-00056845

²⁹⁴ MT-IG-AG-00057040

²⁹⁵ *Id.*

- Roughly 1 in 5 pieces of content young girls see on Instagram is focused on makeup, cosmetics, skin care and related topics.²⁹⁶
- 68% of teen girls experience negative social comparison, and this issue is “not an influencer problem, it’s an Instagram problem.”²⁹⁷

287. Meta also knew that the Explore product—through which Instagram recommends content to users from accounts that they do not follow—exacerbated some of the harms identified by the above research.

288. On July 22, 2021, Meta internally shared research indicating that Instagram’s Explore product tends to increase users’ “exposure to [negative appearance comparison-provoking] content beyond the preferences that people have indicated by the choice of accounts they follow.” Consequently, “17% of people see substantially more (at least 20 percentage points) [negative appearance comparison-provoking] content in Explore than in Feed. It’s worse for women and teen girls.”²⁹⁸

289. In other words, Meta knew that Instagram’s algorithms were feeding users more harmful content than the users would have otherwise received if content visibility was only driven by preferences expressed by the users. Meta never shared this information with the public or with consumers of its products.

290. In mid-2021, Meta undertook an extensive survey of users to “develop a holistic, consistent picture of

²⁹⁶ MT-IG-AG-00056845

²⁹⁷ MT-IG-AG-00056865

²⁹⁸ MT-IG-AG-00056955

user bad experiences on Instagram that allows [Meta] to track [its] progress each half [year].”²⁹⁹

291. Referred to internally as BEEF (“Bad Experiences and Encounters Framework”), the survey measured users’ exposure to certain categories of harmful content on Instagram over a seven-day period and leveraged a subcategory of Instagram users³⁰⁰ as a control group to “determine causality.”³⁰¹

292. As discussed in more detail below, the BEEF survey showed Meta that a significant number of Instagram users regularly experienced negative social comparison-promoting content, self-harm-promoting content, bullying content, unwanted advances, and a collection of other harmful encounters on the platform.³⁰²

293. Relatedly, on August 27, 2021, an Instagram spokesperson shared an exchange with Head of Instagram Adam Mosseri about a forthcoming Wall Street Journal article “that essentially argues that [Instagram’s] design is inherently bad for teenage girls (leads to [suicide

²⁹⁹ MT-IG-AG-00232203 (pg. 3)

³⁰⁰ On information and belief, certain subsets of Facebook and Instagram users are randomly designated as “minimum integrity holdout” and “well-being holdout” accounts—which are afforded even fewer protections from harmful content than most Meta user accounts—for their utility as research control groups. Meta’s failure to publicly disclose this fact represents a material omission, as Meta’s failure to disclose the information likely misled consumers and consequently influenced consumers’ decision-making about their use of Meta’s platforms.

³⁰¹ MT-IG-AG-00232203 (pg. 3)

³⁰² *Id.* (pg. 21)

and self-harm], poor mental health, dysphoria).”³⁰³ The spokesperson observed that the “arguments [are] based on [Meta’s] own research so [they] are difficult to rebut” and noted that the article could expose “that [Meta’s] own research confirmed what everyone has long suspected.”³⁰⁴

294. Upon information and belief, the above-referenced studies and surveys are just the tip of the iceberg, and Meta continues to study and deepen its knowledge that Instagram is harmful for many users while refusing to disclose those materially important insights (as it has done for years).

295. Meta has not publicly released the vast majority of its internal research showing the harm caused by Instagram. Nor has it warned consumers of the important insights Meta learned through those studies. Had Meta done so, consumers could have made much better choices and been better informed about the risks imposed by Instagram and others.

1. Metals Leadership Refused to Remediate Known Harms.

296. Although Meta understood that Instagram causes significant harm to users, Meta executives repeatedly declined to fund proposed well-being initiatives designed to reduce those harms.

297. As early as March 2019, Meta employees were aware that a critical mass of “internal and external” research showed that Instagram harms users. Based on that knowledge, employees raised this issue to Meta’s senior decision-makers.

³⁰³ MT-IG-AG-00205989

³⁰⁴ *Id.*

298. On or around March 8, 2019, Meta researchers sent Sheryl Sandberg a report warning that Meta was harmful for users, on balance. The report stated, “there is increasing scientific evidence (particularly in the US) that the average net effect of [Meta] on people’s well-being is slightly negative.”³⁰⁵

299. The report identified “[t]hree negative drivers that occur frequently on Meta’s platforms and impact people’s well-being.” Those drivers were: (1) problematic use (Meta’s euphemism for compulsive use); (2) social comparison; and (3) loneliness.³⁰⁶

300. The report observed that 58.1% of users experienced varying degrees of problematic use; 45% of users experienced varying degrees of social comparison; and 43% of users experienced varying degrees of loneliness from using Meta’s platforms.³⁰⁷

301. The report warned Sandberg that Meta needed new product investment to remedy these harms. It stated: “With no additional investment, we are on a trajectory to deliver exploratory findings (and NO product changes).” “We recommend investing in both the product effort and the [research] effort.”³⁰⁸

302. On April 8, 2019, the team of Meta researchers escalated their warning by emailing Zuckerberg, Sandberg, and Mosseri. The researchers’ reiterated the warning they had first shared with Sandberg: “there is increasing scientific evidence (particularly in the US) that

³⁰⁵ MT-IG-AG-00157899

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

the average net effect of [Meta] on people’s well-being is slightly negative.”³⁰⁹

303. Like the report that Sandberg received individually, the email to Zuckerberg, Mosseri, and Sandberg implored that “there is a strong need to increase our investment in these areas to make a meaningful shift over the next year and beyond.”

304. The email reiterated: “Without additional investment, we are on a trajectory to deliver exploratory findings and continue our research at a slower pace (and NO product changes).”

305. Several days later, a member of Meta’s finance team—speaking on behalf of Zuckerberg and Sandberg—told the research team that Meta would not fund the recommended investments at the organizational level.³¹⁰

306. Later that same day, Mosseri clarified that the recommended research would not be funded at the Instagram-level either. He explained, “[u]nfortunately I don’t see us funding this from Instagram any time soon.”³¹¹

307. In other words, Meta’s executive decision-makers understood that Instagram was, on net, negatively impacting its users. But rather than disclosing that fact or investing in solutions to the problem, Meta continued to prioritize Company profits at the users’ expense and bury that information out of sight of the public.

³⁰⁹ MT-IG-AG-00158988

³¹⁰ *Id.*

³¹¹ *Id.*

308. Later in 2019, Fidji Simo—then Head of Facebook—told Mosseri that, to improve well-being on Meta’s platforms, “we need to increase investment.”³¹²

309. Mosseri replied, “100% agree. My current take is the biggest problem is: **Well-being is the existential question we face**, and we lack a . . . roadmap of work that demonstrates we care about well-being.”³¹³

310. Despite Mosseri’s purported concerns, Meta’s leadership refused to fund wellbeing product investments for years.

311. For example, in August 2021, Nick Clegg—Meta’s President of Global Affairs—emailed Zuckerberg recommending “additional investment to strengthen our position on wellbeing across the company.”³¹⁴

312. Clegg endorsed this investment because politicians worldwide were raising concerns “about the impact of [Meta’s] products on young users’ mental health.” Clegg concluded that while Meta had a “strong program of research,” it “need[ed] to do more and we are being held back by a lack of investment on the product side which means that we’re not able to make changes and innovations at the pace required.”³¹⁵

³¹² MT-IG-AG-00163662

³¹³ *Id.*

³¹⁴ MT-IG-AG-00210674. Two years earlier, Nick Clegg wrote to Mark Zuckerberg, Sheryl Sandberg, Adam Mosseri, and Chris Cox: “our present policies and public stance on teenage self harm and suicide” looks “convoluted and evasive.” MT-IG-AG-00193053.

³¹⁵ MT-IG-AG-00210674. Following significant media coverage of Meta platforms’ harms to Young Users, Meta’s VP of Research

313. Zuckerberg declined to respond to Clegg’s request for months—worrying some among Meta’s leadership.

314. For instance, in an October 2021 exchange about Clegg’s well-being recommendation (to which Zuckerberg still had not responded), Mosseri complained, “I’m really worried about this . . . we’ve been talking about this for a long time but have made little progress.”³¹⁶

315. Meta’s VP of Product agreed with Mosseri, observing that Meta’s “biggest gap is getting [Meta’s] research into product roadmaps. We got 0 new well-being funding for 2022.”³¹⁷

316. Meta’s VP of Product reiterated the same with other Meta employees: “We’ve made a lot of progress on research . . . We’ve not made a lot of progress on getting the research into product.”³¹⁸

317. In November 2021, Clegg sent an email following up on his August 2021 correspondence to which Zuckerberg had failed to respond.³¹⁹ In the follow-up email, Clegg underscored that product investment is “important to ensure we have the product roadmaps necessary to

emailed Clegg on September 20, 2021, to share, “I feel even more convinced that we need to make more progress on well-being on the product side.” MT-IG-AG-00208523.

³¹⁶ MT-IG-AG-00188864

³¹⁷ *Id.*

³¹⁸ MT-IG-AG-00189014

³¹⁹ MT-IG-AG-00210674

stand behind our external narrative of well-being on our apps.”³²⁰

318. In other words, as Clegg recognized, there was a significant gap between the Company’s external narrative that it was committed to well-being initiatives and its actual financial commitment to that issue.

319. Ultimately, Zuckerberg was responsible for that misrepresentation, as he acts as the ultimate decision-maker for all major corporate choices. As Adam Mosseri and a fellow Meta executive complained in a 2016 internal message, Zuckerberg is “the only non-middle-manager” at Meta.³²¹

320. In that same exchange, a third executive agreed, observing that while “most companies are ‘feudal’ in their structure—nesting minor fiefdoms,” Meta is not. Instead, Meta is “an absolute dictatorship” run by Zuckerberg.³²²

2. Meta Limited Internal Access to Documents Showing Harms.

321. As described above, Meta never publicly disclosed: (1) the internal research findings showing the harm Instagram caused its users; or (2) the Company decision-makers’ failure to invest in recommended solutions to known problems.

322. To the contrary, Meta took affirmative steps to hide its internal research from the public—including from Nevada consumers.

³²⁰ *Id.* (emphasis added)

³²¹ MT-IG-AG-00219284 (pg. 28)

³²² *Id.*

323. As Meta’s products, including Instagram, faced growing scrutiny over time, Meta locked down access to internal research findings.

324. For instance, on August 27, 2021—shortly after Meta learned of the Wall Street Journal’s forthcoming article exposing a small fraction of Meta’s well-being research—one Instagram research manager noted that the Company was “locking down access to some of the extra sensitive pieces of work.”³²³

325. The same manager subsequently instructed a research colleague to “make sure that any of our shareable deliverables or insights docs that you own on the mental well-being space are locked down.”³²⁴

326. Similarly, on October 20, 2021, a senior Meta well-being researcher complained about a new policy requiring Meta’s Communications team to review research findings even before they could be shared *internally*.³²⁵

327. A colleague sympathized with the senior researcher’s grievance and observed that if internal research “needs to be sanitized to share with [internal] people that need to know (i.e., the people in focused, closed groups) then we’ve got a big problem.”³²⁶

328. The colleague continued, bemoaning the way a Communications team employee had sanitized their research findings before internal circulation. The colleague explained that the communications team “took issue with language describing a finding as applying to a general

³²³ MT-IG-AG-00185325

³²⁴ *Id.*

³²⁵ MT-IG-AG-00062055

³²⁶ *Id.*

population instead of just survey responders . . . The discussion that followed left [a second colleague] feeling that [Meta] wouldn't want us to do that so that [Meta] could more easily dismiss inconvenient findings. This is a huge moral hazard, in my opinion.”³²⁷

329. True to form, Meta also restricted access to the BEEF survey results in the latter half of 2021. As one Meta employee observed on September 30, 2021, “[t]he results of BEEF . . . are only being shared in private and select groups, to avoid leaks. Sad new world.” According to the same employee, Meta narrowed BEEF survey result access to a “66-person secret group.”³²⁸

330. By 2021, one PhD-level researcher compared Meta's messaging strategy to that of Big Tobacco. After Meta tried to downplay Instagram's role in causing mental health harms in the wake of the Wall Street Journal's exposé, the researcher emailed colleagues explaining that:

Pre-[Meta] I spent a lot of time working on public health and environmental issues, and this sounds eerily similar to what tobacco companies and climate change deniers say. Uncertainty/doubt is a key component of the scientific method, but it can also be weaponized to push back on critics (e.g., ‘. . . but this one scientist thinks cigarettes don't cause cancer,’ ‘we need more research to know for sure whether climate change is man made,’ ‘evolution is just a theory,’ etc

³²⁷ *Id.*

³²⁸ MT-IG-AG-00144350

etc) . . . [W]hen we use language like this it puts us in very bad company.³²⁹

331. On information and belief, Meta’s internal culture of secrecy was designed to keep consumers, parents, guardians, and policy makers in the dark about the harm Meta was causing its users, including Instagram users.

3. Meta Did Not Disclose Its Knowledge That Instagram’s Cosmetic Surgery Effect Selfie Filters Were Especially Harmful to Young Users.

332. Meta’s decision-making behind Instagram’s cosmetic selfie filters illustrates the Company’s willingness to implement harmful platform features without disclosing known risks to the public.

333. Upon information and belief, by 2017, Instagram was losing users and content creators to rival social media platforms, such as Snapchat.

334. Meta staff concluded that “face filters are viewed as the key differentiator to keep [content creators] using Snapchat—in particular very large talent is eager for a simple beauty filter to help them be more comfortable to put their face on camera.”³³⁰

335. Shortly thereafter, Meta worked to integrate augmented reality filter effects into Instagram.³³¹

336. For example, an internal Meta presentation dated February 27, 2018 describes the “strategic goal” of

³²⁹ MT-IG-AG-00143575

³³⁰ MT-IG-AG-00149666

³³¹ MT-IG-AG-00151652

integrating augmented reality filter effects into the Instagram platform “to see if [augmented reality] effects can get strong product market fit . . . by tapping into [Instagram’s] teens community and cultural moments.”³³²

337. That “strategic goal” was intended to benefit “Instagram, Teens, and Partners” in specific ways. For Instagram’s part, integrating augmented reality filter effects would “[i]ncrease [c]amera [e]ngagement in order to drive more sharing” and “[b]uild a daily behavior by giving [t]eens reasons to check the camera everyday [sic] though scalable new content.”³³³

338. In other words, these camera filters would increase Instagram engagement—and consequently, Meta’s profits.

339. But as early as at least 2018, Meta was aware that augmented reality filters harm users—particularly considering a “growing body of research that social media may be driving significant increases in rates of anxiety and depression, esp[ecially] among young women.”³³⁴

340. As one employee explained, “[t]his is a hard issue to navigate because I know there is a lot of competitive pressure and a lot of market demand for filters that go much more directly into the beautification space. And if we test any of these things, they will undoubtedly perform well. But just because people like and want something in the short term doesn’t mean it’s healthy for them.”³³⁵

³³² *Id.* (pg. 3)

³³³ *Id.* (pg. 20)

³³⁴ MT-IG-AG-00213785

³³⁵ *Id.*

341. Consequently, in October 2018, Meta commissioned “a researcher and licensed psychologist at Duke who specializes in eating disorders and body image issues among adolescents and adults” to undertake a literature review titled, “Consequences and Implications of Selfie Manipulation on Well-Being.”³³⁶

342. Meta’s commissioned literature review found that:

An analysis of the costs and benefits of editing selfies and viewing manipulated photos indicate the risks far outweigh the benefits. Research to date suggests these behaviors exacerbate risk and maintenance of several mental health concerns including body dissatisfaction, eating disorders and body dysmorphic disorder . . . Data also indicates that editing selfies may have a paradoxical effect with regards to social connection. Rather than increasing acceptance, editing photos may actually increase social rejection . . . Rather than bringing people together, selfie manipulation tools risk propagating unrealistic standards of beauty that are cross-culturally harmful and divide more than they unite.³³⁷

343. Nevertheless, Meta’s decision-makers implemented cosmetic selfie filters on Instagram without publicly disclosing these known risks and material facts.

³³⁶ *Id.*

³³⁷ MT-IG-AG-00213789

344. In mid-October 2019, Meta received harsh public rebuke from “press and mental health experts” who observed that certain selfie filters available on the Instagram platform promoted plastic surgery, raising serious mental health concerns.

345. Internally, Meta employees referred to this as a “PR fire” that included “negative press coverage, questions from regulators, and growing concern from experts.”³³⁸

346. Based on that public pressure—and roughly a year after receiving unequivocal warnings from the literature review that it commissioned—Meta installed a set of *interim* policies banning augmented reality filters that explicitly promote cosmetic plastic surgery.

347. After installing these interim policies, Meta devoted significant personnel time to considering its long-term position regarding these augmented filters.

348. For example, Meta employees consulted “[i]ndependent experts . . . from around the world” to study this issue. According to a subsequent internal presentation, those experts “generally agree that Cosmetic Surgery Effects raise significant concerns related to mental health and wellbeing, especially for teenage girls.” The presentation recommended “continuing the ban and erring on the side of protecting users from potential mental health impacts.”³³⁹

349. In November 2019, Meta staff formally submitted a long-term policy proposal to the Company’s decision-makers. It recommended that the Company should “[r]eject cosmetic effects that change the user’s facial

³³⁸ MT-IG-AG-00166909

³³⁹ MT-IG-AG-00170733

structure in a way that’s only achievable by cosmetic surgery for the purposes of beautification (in a way that cannot be achieved by makeup).” The proposal clarified, “[t]his *does not apply* to effects that change a user’s facial structure for the purpose of turning the user into a character or animal.”³⁴⁰

350. Meta’s decision-makers were unmoved by this recommendation.

351. For example, on November 14, 2019, Andrew Bosworth—then Meta’s VP of Augmented Reality and Virtual Reality—opposed the proposal, arguing that lifting the ban would only “move [users] to other apps which aren’t likely to be as restrained.”³⁴¹

352. A day later, Instagram’s Head of Public Policy questioned Bosworth’s perspective. She noted that the “strong recommendation” to “disallow[] effects that mimic plastic surgery” was made after consulting with Meta’s communications, marketing, and policy teams—as well as engagement “with nearly 20 outside experts and academics.”³⁴²

353. Instagram’s Head of Public Policy added, **“we’re talking about actively encouraging young girls into body dysmorphia . . . the outside academics and experts consulted were nearly unanimous on the harm here.”**³⁴³

354. Two days later, a second employee likewise challenged Bosworth’s viewpoint: “[T]he argument that this

³⁴⁰ MT-IG-AG-00166909 (pg. 1)

³⁴¹ *Id.* (pgs. 10-11)

³⁴² *Id.* (pg. 9)

³⁴³ *Id.* (pgs. 9-10) (emphasis added)

decision [to prohibit cosmetic surgery selfie filters] might move people into other apps doesn't carry weight with me [i]f it means we're not setting a good example/being a good steward for young people.”³⁴⁴

355. Shortly thereafter, the question of “whether [Meta] should continue, modify, or lift the temporary ban on Cosmetic Surgery [augmented reality] Effects” was elevated to Mr. Zuckerberg.³⁴⁵

356. Notwithstanding the staff's “strong recommendation” based on a chorus of experts, Mr. Zuckerberg decided to lift Meta's ban on these effects on May 8, 2020.³⁴⁶ Meta never publicly disclosed its findings.

357. Later that week, a senior Meta employee memorialized her disagreement with Mr. Zuckerberg's decision, stating “I respect your call on this and I'll support it, but want to just say for the record that I don't think it's the right call given the risks . . . I just hope that years from now we will look back and feel good about the decision we made here . . . I wanted to take a moment to express my disagreement even as we move to implement this decision. Thanks for listening.”³⁴⁷

358. In April 2021, several Meta employees were still reeling from Mr. Zuckerberg's decision. Reacting to an article that referred to social media's widespread use of augmented reality filters as “a mass experiment on girls and young women,” an employee remarked, “[t]his makes

³⁴⁴ *Id.* (pg. 9)

³⁴⁵ MT-IG-AG-00198060

³⁴⁶ MT-IG-AG-00198471

³⁴⁷ *Id.*

me so sad to read. Especially knowing how hard we fought to prevent these on [Instagram].”³⁴⁸

359. A second employee replied, “I know, it’s pretty dispiriting to think about. And the fact that we have no idea what the long-term effects will be for this generation that has grown up comparing themselves to something that’s . . . totally fake.”³⁴⁹

360. The first responded: “Given all the continued coverage on the impact of beauty filters on youth, I’d want us to consider age-gating these effects to [under-18] accounts.”³⁵⁰

361. Upon information and belief, Meta never age-gated cosmetic selfie filters on its platforms—and the platform feature remains accessible to Young Users to this day.

362. Upon information and belief, Meta never publicly disclosed its findings that these effects were harmful to users, a material omission that misled consumers, parents, and guardians, leading consumers to spend more time on Instagram than they otherwise would.

³⁴⁸ MT-IG-AG-00085750

³⁴⁹ *Id.*

³⁵⁰ *Id.*

B. Meta Promoted Misleading Metrics About the Incidence of Harms.

1. Meta’s Community Standards Enforcement Reports Vastly Understate the Incidence of Harmful Content and Experience.

363. Through public representations, Meta creates the impression that Instagram is a safe platform on which harmful content is rarely encountered.

364. For example, Meta broadcasts that message through its Community Standards Enforcement Reports (“the Reports”), which the Company publishes quarterly on its online “Transparency Center” and amplifies through press releases.

365. The Reports describe the percentage of content posted on Instagram that Meta removes for violating Instagram’s community standards. Meta often refers to that percentage as its “prevalence” metric.

366. Through Report-related talking points, Meta directed its employees to tout the “prevalence” metric as “the most important measure of a healthy online community.”³⁵¹

367. The Reports create the impression that because Meta aggressively enforces platform community standards—thereby reducing the “prevalence” of community-standards-violating content—Instagram is a safe product that only rarely exposes users (including Young Users) to harmful content.

368. However, this is a false equivalency intended to sow confusion. As Meta well understands, the prevalence

³⁵¹ MT-IG-AG-00023718

of community-standards-violating content, which is often quite low, is not the same as the actual prevalence of *harmful content*, which is rampant on Instagram.

369. The “community standards,” which are drafted by Meta, address only a narrow subset of harmful content; indeed, Meta purposely designed those standards narrowly so that they are rarely violated.

370. This allows Meta to expressly represent that Instagram is safe due to enforcement of these community standards. But this simply is artful misclassification—enabling Meta to engage in a conversation that purposely excludes and ignores the larger swath of harmful content on Instagram.

371. For example, the 2019 third quarter Report touts Meta’s “[p]rogress to help keep people safe.”³⁵² Likewise, the 2023 first quarter Report states that “we publish the Community Standards Enforcement Report...to more effectively track our progress and demonstrate our continued commitment to making . . . Instagram safe.”³⁵³

372. Meta also publicly wields the Reports as evidence of the Company’s transparency. For instance, Meta’s third quarterly Report from 2021 declares “[w]e remain committed to providing transparency to what’s happening on our platforms.”³⁵⁴

373. This representation—publicly accessible on Meta’s online Transparency Center—creates the impres-

³⁵² MT-IG-AG-00002973

³⁵³ <https://transparency.fb.com/data/community-standards-enforcement/> (last visited Jan. 27, 2024).

³⁵⁴ MT-IG-AG-00023746

sion that through the Reports, Meta is disclosing its information most relevant to the safety of Instagram and the incidence of harmful content on that platform. In other words, Meta posts these reports to its online Transparency Center so that users, parents, and guardians who visit that site will wrongly believe that Young Users are unlikely to experience harm on Instagram.

374. Indeed, documents show that Meta intended the Reports to create that exact (mis)understanding.

375. In March 2021, Meta conducted an internal Meta “Company Narrative Audit” that suggested ways the Company could improve its standing with the public—and with consumers, more specifically. The audit identified several “narratives” the Company should attempt to combat.³⁵⁵

376. One such narrative was the growing sentiment that “[Meta] allows hateful and harmful content to proliferate on its platform.”³⁵⁶

377. To shift the “harmful content” narrative among “consumers,” the audit suggests that Meta should publicize that: “Every three months we publish our Community Enforcement Standards Report to track our progress and demonstrate our continued commitment to making Facebook and Instagram safe.”³⁵⁷

378. Consistent with this effort, internal communications show that Meta encouraged employees to use the Reports as an external “measure for platform safety” that

³⁵⁵ MT-IG-AG-00179744 (pg. 12)

³⁵⁶ *Id.*

³⁵⁷ *Id.*

“illustrate the efforts we are making to keep our platforms safe.”³⁵⁸

379. But the impression that the Reports create—that Meta platforms are safe and only rarely display harmful content—is false and misleading.

380. For example, Meta’s 2021 third quarter Report states that on Instagram, “less than 0.05% of views were of content that violated our standards against suicide & self-injury.”³⁵⁹ That representation deliberately created the public impression that it was very rare for users to experience content relating to suicide and self-injury on Instagram.

381. But Meta’s contemporaneous internal BEEF survey data showed that during 2021, 6.7% of surveyed Instagram users had seen self-harm content within the last seven days, a more than thirteen-fold increase over the publicly reported figure.³⁶⁰ For users between 13-15 years of age, 16.9% had seen content relating to self-harm on Instagram within the last seven days, a nearly 34-fold increase over publicly reported data.³⁶¹

382. Thus, the frequency with which users—particularly Instagram’s youngest users—encounter self-harm-related content on Instagram vastly exceeded the impression Meta created through its Reports.

383. A similar discrepancy may be seen in Meta’s measurement of bullying and harassing content.

³⁵⁸ MT-IG-AG-00023675

³⁵⁹ MT-IG-AG-00091755 (pg. 3)

³⁶⁰ MT-IG-AG-00232203 (pg. 21)

³⁶¹ *Id.*

384. For example, the third quarterly Report of 2021 stated that “we estimate between 0.05% to 0.06% of views were of content that violated our standards against Bullying & Harassment [on Instagram].”³⁶² This representation created the impression that it was very rare for users to observe or experience bullying or harassment on Instagram.

385. But Meta’s contemporaneous internal user survey data told a different story: Among surveyed Instagram users, 28.3% witnessed bullying on the platform within the last seven days, and 8.1% were the target of bullying on the platform within the last seven days.³⁶³ These figures are nearly 472 times and 135 times higher than what the company publicly reported, respectively.

386. Among 13-15-year-olds, 48.7% reported witnessing bullying within seven days of the survey. Among users aged 16-17, that figure was 50%.³⁶⁴

387. When asked whether they had been the target of bullying on Instagram within the last seven days, 21.8% of 13-15-year-olds—more than one in five—said yes.³⁶⁵ Again, Meta’s own internal documents reveal rates of bullying hundreds of times higher than what it publicly reported.

388. Similarly, and contrary to the 2021 third quarter Report’s representation that harassment on Instagram was rare, Meta’s contemporaneous internal survey showed that 11.9% of all survey respondents said they had

³⁶² MT-IG-AG-00091755

³⁶³ MT-IG-AG-00232203 (pg. 21)

³⁶⁴ *Id.*

³⁶⁵ *Id.*

received unwanted advances on Instagram within the last seven days.³⁶⁶

389. Among 13-15-year-olds, 13.0% reported that they had received unwanted advances within the last seven days. Among 16-17-year-olds, that figure was 14.1%.³⁶⁷

390. Meta employs “sleights of hand” in its enforcement policies, mechanisms, measurement, and reporting. As a recent Wall Street Journal exposé explains, “Meta had come to approach governing user behavior as an overwhelmingly automated process,” meaning that it relied on machine learning to (1) identify and (2) handle objectionable content.³⁶⁸

391. But this also meant that Meta “shifted resources away from” any human-led review, a shift which also included paying less attention to user-reported harmful content.³⁶⁹ Meta “added steps to the reporting process” in 2019 in an effort “[t]o discourage users from filing reports.”³⁷⁰

392. This move to automated review created two critical problems: first, “[t]he systems didn’t catch anywhere near the majority of banned content—only the majority of

³⁶⁶ *Id.*

³⁶⁷ *Id.*

³⁶⁸ Jeff Horwitz, *His Job Was to Make Instagram Safe for Teens. His 14-Year-Old Showed Him What the App Was Really Like*, The Wall Street Journal (Nov. 2, 2023), <https://www.wsj.com/tech/instagram-facebook-teens-harassment-safety-5d991be1> (last visited Jan. 27, 2024).

³⁶⁹ *Id.*

³⁷⁰ *Id.*

what the company ultimately removed,” and second, “[a]s a data scientist warned Guy Rosen, Facebook’s head of integrity at the time, **Meta’s classifiers were reliable enough to remove only a low single-digit percentage of hate speech with any degree of precision.**”³⁷¹

393. “There’s a grading-your-own-homework problem,” said Zvika Krieger, a former director of responsible innovation at Meta who worked with the Well-Being Team. “Meta defines what constitutes harmful content, so it shapes the discussion of how successful it is at dealing with it.”³⁷²

394. In other words, contrary to the impression the Reports created, Instagram users in general—and Young Users in particular—regularly encounter content related to self-harm, bullying, and harassment on Instagram. Through its Reports, Meta affirmatively, drastically, and materially misrepresents the actual prevalence of such harms.

2. Meta’s Executive Leadership Knew the Reports Misled and Would Continue to Mislead Consumers.

395. Meta’s leadership team understood the discrepancy between Meta’s public Reports and Meta’s internal survey results.

396. In fact, Meta’s most senior leadership—including Zuckerberg, Sandberg, Mosseri, and Chris Cox—were personally notified of this critical gap in Meta’s public-facing safety representations more than two years ago.

³⁷¹ *Id.* (emphasis added).

³⁷² *Id.*

397. On October 5, 2021, Arturo Bejar—then a contractor for Meta and formerly Meta’s Director of Engineering—emailed Zuckerberg, Sandberg, Cox, and Mosseri voicing concerns that the Company’s public focus on community standards enforcement obscured the full extent of the harms users experienced on Instagram.³⁷³

398. Bejar attached the above-referenced internal BEEF survey results to his email.³⁷⁴

399. Bejar proposed that the Company shift the focus of its public communications away from the “prevalence” of community standards violations, towards a measure (like BEEF survey data) that more accurately conveyed the amount of harmful content encountered on Instagram.³⁷⁵

400. Meta disregarded Bejar’s suggestion.³⁷⁶

401. In fact, Zuckerberg, with whom Bejar worked directly for several years, declined to respond to Bejar’s email. Bejar has stated that he could “not think of an email that I sent to Mark [Zuckerberg] during my time [at Meta] that he didn’t read or respond to.”³⁷⁷

402. Even after Bejar’s email, Meta continued to issue and publicize the Reports—even though Meta’s leadership team knew the Reports vastly under-represented the volume of harmful content on Instagram, and despite Bejar’s pleas.

³⁷³ Bejar Transcript Excerpts.

³⁷⁴ *Id.*

³⁷⁵ *Id.*

³⁷⁶ *Id.*

³⁷⁷ *Id.*

403. During the State’s investigation, Bejar testified that Meta adopted and maintained this strategy to mislead the public.

404. When asked if he believed “that Mr. Zuckerberg and other Company leaders focused on the Prevalence metric because it created a distorted picture about the safety of Meta’s platforms,” Bejar testified “I do.”³⁷⁸

405. When asked if he thought “Mr. Zuckerberg’s public statements about prevalence created a misleading picture of the harmfulness of Meta’s platforms,” Bejar testified “I do.”³⁷⁹

406. And when asked if he was “aware of any instances where the Company, in [his] view, minimized the harms users were experiencing on Meta’s platforms,” Bejar testified: “Every time that a Company spokesperson in the context of harms quotes Prevalence statistics I believe that is what they are doing, that they’re minimizing the harms that people are experiencing in the product.”³⁸⁰

407. In short, Meta issued the Reports and made other public statements in order to downplay the harmful experiences that are widespread on Instagram—particularly for Young Users.

408. The Reports created the impression for users, parents, and guardians that Instagram would provide minimal exposure to harmful experiences such as bullying, self-harm content, and unwanted contacts, when Meta knew that users (and particularly Young Users)

³⁷⁸ *Id.*

³⁷⁹ *Id.*

³⁸⁰ *Id.*

were regularly exposed to those experiences on Instagram.

409. Moreover, Meta elected to eliminate projects like BEEF, which the Company began to see as sources of only bad news. Following Bejar’s departure from the Company, there was “company-wide discussion” about the fact that “[c]urrent surveys are intended to capture harm (BEEF and TRIPS) but not capture positive experiences or support.”³⁸¹ Put differently, Meta was interested in burying its head in the sand as to users’ harmful experiences, and believed that its resources would be better spent ignoring those issues and focusing on its platforms’ upsides. True to form, “BEEF was discontinued after 2022H1.”³⁸²

C. Meta Deceived Consumers by Promoting “Time Spent” Tools Despite Known Inaccuracies.

410. Meta has affirmatively deceived consumers by promoting and maintaining inaccurate time-tracking tools on Meta platforms.

411. On August 1, 2018, Meta announced “new tools to help people manage their time on Facebook and Instagram.” The announcement touted platform-specific activity dashboards, daily use reminders, and a push notification-limiting tool engineered “based on collaboration and

³⁸¹ MT-IG-AG-00062946

³⁸² MT-IG-AG-00230677 (pg. 2)

inspiration from leading mental health experts and organizations, academics, [Meta’s] own extensive research and feedback from [Meta’s] community.”³⁸³

412. In that announcement, Meta acknowledged that it has “a responsibility to help people understand how much time they spend on [Meta] platforms so they can better manage their experience.” Meta stated that it hopes “that these tools give people more control over the time they spend on our platforms and also foster conversations between parents and teens about the online habits that are right for them.”³⁸⁴

413. Through these public statements and others, Meta led Nevada consumers, parents, and guardians to believe they could rely on Meta’s so-called “Time Spent” tools to track and manage the time spent on the two platforms in a meaningful, accurate way.

414. But those representations were false. By March 2020, Meta knew that its Time Spent data was materially flawed.

415. As one Meta staffer observed at the time, “[o]ur [Time Spent] data as currently shown is incorrect. It’s not just that Apple / Google have better data. Ours is wrong. Far worse. **We’re sharing bad metrics externally . . .** The reason this is relevant is we vouch for these numbers. **Any day they’re out there is a legal liability.**”³⁸⁵

³⁸³ Ameet Ranadive, *New Tools to Manage Your Time on Facebook and Instagram*, Facebook (Aug. 1, 2018), <https://about.fb.com/news/2018/08/manage-your-time/#:~:text=To%20access%20the%20tools%2C%20go,total%20time%20for%20that%20day> (last visited Jan. 27, 2024).

³⁸⁴ *Id.*

³⁸⁵ MT-IG-AG-00171486

416. By the middle of 2020, Meta staff sought feedback from Instagram’s internal team charged with determining whether product features should be sunsetted. That team recommended that Meta’s Time Spent tools should be removed from Meta platforms.³⁸⁶

417. But Meta did not follow that recommendation because the “Time Spent” tool was a key part of Meta’s message to users, parents, and guardians that Instagram was a trustworthy platform where the risks of addiction were low and manageable.

418. For instance, when she learned about the effort to remove the Time Spent tools, Instagram’s Head of Policy feared that the removal of inaccurate Time Spent tools would strip Meta of its “biggest proof point” on “tech addiction/problematic use.” Consequently, she advocated that the Time Spent tools should remain in place, despite their inaccuracy:

[T]he time spent dash[board and] end of feed notification is the biggest proof point we have on tech addiction/problematic use and the tool with the most positive sentiment from our mental health stakeholders—there’s no product work we’ve done in the last four years that comes close **and we wouldn’t have the credibility we now have in the social comparison/mental health parent space had we not launched this . . .** In order to land this unship successfully we would need to land the why, and without doing so we would lose significant credibility with our policy and

³⁸⁶ MT-IG-AG-00174125

mental health stakeholders . . . I don't think that's going to land well without having something that addresses the underlying issue around problematic use.³⁸⁷

419. The desire to maintain “credibility . . . in the social comparison/mental health parent space . . .” continued to motivate Meta well into 2020, as users spent more time on Meta’s platforms during the COVID-19 pandemic. For example, in July 2020, Meta’s Product Marketing and Communications teams told colleagues that Meta should not remove the inaccurate Time Spent tools because:

- “Time spent is a bigger concern due to COVID/spending more time online.”
- “[Meta] just deprioritized the mental health team, so no new or upcoming [mental health-promoting] features to point to here.”
- “[Facebook] launched their v2 time spent tool on iOS in Q2 (Android coming in Q3) and got decent press around the re-launch.”
- “Upcoming moments make the market environment sensitive in this area (suicide prevention day (sept), world mental health day (oct)) and there is concern that back-to-school will spark new issues in market perception due to the majority being online/remote learning so time spent online will likely be top-of-mind for many.”³⁸⁸

420. Ultimately, Meta preferred to maintain the façade of Meta’s Time Spent tools because the truth—that Meta was not actually providing any meaningful, accurate

³⁸⁷ MT-IG-AG-00197537 (pgs. 2-3)

³⁸⁸ MT-IG-AG-00174972 (pg. 2)

tools to help users, parents, or guardians combat or reduce compulsive use—would undermine Meta’s business interests and public “sentiment.” In the words of one Meta employee who originally advocated for the removal of inaccurate Time Spent tools: “I don’t think we can touch [Time Spent] for months, maybe even more. **The regulatory and brand risk from removing our only addiction-related features outweighs . . . the wins around user trust.**”³⁸⁹

421. Meta regularly promoted its “Time Spent” tool as an accurate and useful way for users to control their use of Instagram, even while it knew that that the “Time Spent” tool delivered inaccurate metrics.

422. Meta made these representations to build trust with consumers, parents, and guardians that Meta’s Time Spent tool would help users (particularly Young Users) manage their time on Instagram, even though Meta knew that tool was broken. In this way, Meta won public trust and sentiment by deceiving the public about the utility of its core addiction-mitigation feature.

D. Through Public Misrepresentations, Meta Leads the Public to Trust That Instagram is Safe for Young Users.

423. The Time Spent episode is not the only time Meta has prioritized winning trust over telling the truth. To the contrary, Meta has repeatedly misrepresented facts about its business to convince consumers, parents, and guardians that Meta can be trusted to keep Young Users safe on Instagram.

³⁸⁹ MT-IG-AG-00202191 (pg. 1)

1. To Engender Public Trust, Meta Created the False Impression That It Does Not Prioritize “Time Spent”.

424. To downplay concerns that its platforms are addictive, Meta has repeatedly created the public impression that it does not prioritize increasing users’ time. To construct that impression, Meta employees represented that the Company does not internally measure success in terms of the time users spend on Meta’s platforms or otherwise encourage employees to pursue that goal.

425. For example, on October 30, 2019, Zuckerberg publicly stated that Meta does not allow Meta “teams [to] set goals around increasing time spent on [Meta’s] services.”³⁹⁰

426. Similarly, in public remarks, Sandberg used talking points representing that the Company does not “optimize [its] systems to increase amount of time spent” and that Meta “explicitly do[es]n’t give [its] team goals around time spent.”³⁹¹

427. Meta makes representations like these to garner trust: it wants the public (including consumers, parents, and guardians) to believe that it does not measure success in terms of time spent to dispel the notion that it intentionally fuels compulsive use of Meta’s products.

428. But Meta’s representation that it does not set goals based on time spent is false.

429. For instance, on December 28, 2015, Zuckerberg instructed that Meta should aim to increase the time that

³⁹⁰ MT-IG-AG-00002294

³⁹¹ MT-IG-AG-00230164

Instagram users spend on the platform by 10% within the next five years.³⁹²

430. Similarly, an internal Meta document lists “emphasis on driving time spent” among the Company’s “[k]ey [t]hemes” for the first half of 2016.³⁹³

431. As another example, an internal Meta presentation titled “2017 Teens Strategic Focus” explicitly describes Meta’s 2017 “goal” to “grow teen time spent.”³⁹⁴

432. Thus, by claiming that it did not set goals based on time spent, Meta affirmatively misled the public—including Nevada consumers, parents, and guardians—about the Company’s motivations and internal business practices. This is a material misrepresentation, as reasonable consumers, parents, and guardians would be less likely to trust a platform that works to capture ever-increasing shares of users’ time.

2. Meta Deceptively Testified That It Age-Gates Content Inappropriate for Young Users.

433. Meta also cultivated the impression that it protects Young Users from harmful or inappropriate content on Instagram.

434. In the opening remarks to her September 2021 Congressional testimony about the mental health effects of Meta’s platforms, Antigone Davis—Meta’s Global Head of Safety—told lawmakers: “We have put in place

³⁹² MT-IG-AG-00146511

³⁹³ MT-IG-AG-00146487

³⁹⁴ MT-IG-AG-00189923 (pgs. 2, 5)

multiple protections to create safe and age-appropriate experiences for people between the ages of 13 and 17.”

435. During subsequent questioning from senators, Davis explained that “[w]hen it comes to those between 13 and 17, we consult with experts to ensure that our policies properly account for their presence, for example, by age-gating content.” Davis added, Meta does not “allow young people to see certain types of content. And we have age gating around certain types of content.”³⁹⁵

436. Davis also specifically testified that Meta does not “direct people towards content that promotes eating disorders.”³⁹⁶

437. Through Davis’s testimony, Meta led the public to believe that Meta successfully age-gates content that is inappropriate or harmful for Young Users.

438. But internal documents reveal Meta’s knowledge that Young Users regularly encounter content on Meta’s platforms that is not age appropriate—and that Meta’s platforms do, in fact, push certain Young Users toward content that promotes eating disorders.

439. For instance, by Meta’s own internal measure, only 2% of content that Young Users encounter on Meta’s platforms is “age appropriate nutritious” or “the sort of content we would like to promote to teens.”³⁹⁷

440. And, in contrast to Davis’s testimony, Meta knows that Instagram disproportionately directs teen

³⁹⁵ <https://www.rev.com/blog/transcripts/facebook-head-of-safety-testimony-on-mental-health-effects-full-senate-hearing-transcript> (last visited Jan. 27, 2024).

³⁹⁶ *Id.*

³⁹⁷ MT-IG-AG-00187589

girls to negative appearance comparison-promoting content—content that Meta knows promotes eating disorders.

441. As these examples show, through Davis’ testimony, Meta affirmatively misled the public—including Nevada consumers—about the efficacy of Meta’s age-gating efforts while hiding material information internally. This is a material misrepresentation, as reasonable consumers, parents, and guardians would be less likely to trust a platform that exposes users to age-inappropriate or harmful content.

3. Meta Deceptively Testified That It Does Not Place a Monetary Value on Young Users.

442. In a similar vein, Meta deceptively led the public to believe that it does not place a monetary value on Young Users’ use of Meta platforms. Meta created the impression that it does not discuss its youngest users in terms of their financial value to the Company.

443. For example, during Davis’s September 2021 Congressional testimony, Senator Amy Klobuchar asked Davis for the monetary value that Meta places upon a young user’s lifetime use of Meta products.

444. Davis responded, “That’s not how we think about building products for young people . . . It’s just not the way we think about it.”

445. Through Davis’s testimony, Meta led the public to believe that it does not place a monetary value on Young Users’ use of Meta’s platforms.

446. But Meta’s internal correspondence demonstrates that Davis’s response to Senator Klobuchar was inaccurate and misleading.

447. For instance, an internal email from September 2018 illustrates that Meta plainly discusses the financial value that Young Users represent to the Company. According to Meta, **“The lifetime value of a 13 [year old] teen is roughly \$270 per teen.”**³⁹⁸ Again, this information was buried away from public view.

448. Consequently, through Davis’s testimony, Meta affirmatively misled the public—including Nevada consumers—about whether the Company places a monetary value upon Young Users’ lifetime use of Meta’s products. This is a material misrepresentation, as reasonable consumers, parents, and guardians would be less likely to trust a platform that calculates the monetary value that the platform may extract from a Young User’s lifetime engagement.

4. Meta Created the Misleading Impression That It Was Not Restricting Access to Internal Research Findings.

449. Through Congressional testimony, Meta deceptively led the public to believe that it had not changed its internal data and research access policies in response to The Wall Street Journal’s 2021 coverage of Meta’s internal research findings. Meta wanted to create that impression so consumers, parents, and guardians would believe that the Company had no reason to lock down internal information about Instagram’s mental health impacts.

450. During Davis’s September 2021 Congressional testimony, Tennessee Senator Marsha Blackburn asked Davis “how are you restricting access to data internally? Have your policies changed since The Wall Street Journal

³⁹⁸ MT-IG-AG-00097186

articles [describing the Meta’s internal wellbeing research]?”

451. Davis succinctly responded, “Senator, not that I am—not that I’m aware of certainly.”

452. Through Davis’s testimony, Meta led the public to believe Meta did not change its internal access policies—such as restricting internal access to data and research—following The Wall Street Journal’s coverage of Meta’s internal well-being research.

453. But in fact, as described in detail above, in reaction to The Wall Street Journal’s reporting (which led to Davis’s Congressional testimony), Meta methodically locked down internal access to well-being related data and research.

454. To briefly restate evidence described above, in August 2021—shortly after Meta learned of The Wall Street Journal’s forthcoming journalism—one Instagram research manager noted that the company was “locking down access to some of the extra sensitive pieces of work.”³⁹⁹

455. The same manager subsequently instructed a research colleague to “make sure that any of our shareable deliverables or insights docs that you own on the mental well-being space are locked down.”⁴⁰⁰

456. Consequently, through Davis’s testimony, Meta affirmatively misled the public—including Nevada consumers—about whether the Company internally restricted access to data and research following The Wall Street Journal’s coverage of Meta’s internal findings. This

³⁹⁹ MT-IG-AG-00185325

⁴⁰⁰ *Id.*

is a material misrepresentation, as reasonable consumers, parents, and guardians would be less likely to trust a platform that undertakes affirmative steps to shield mental well-being research from employees so as to reduce the risks that research is leaked to the public.

5. Meta Created the Impression That Its Platforms Are Not Addictive, Despite Meta’s Internal Research to the Contrary.

457. Through Congressional testimony, Meta led the public to believe that its platforms are not addictive, despite the Company’s internal research to the contrary.

458. In her September 2021 Congressional testimony, Davis said that Meta does not build its products to be addictive and disputed the addictive nature of Meta’s products.

459. Similarly, in Congressional testimony from December 2021, Adam Mosseri said, “I don’t believe that research suggests that our products are addictive.”

460. Through Davis and Mosseri’s testimony, Meta led the public to believe Meta’s platforms are not addictive.

461. In fact, as described in detail above, Meta (1) knew Instagram was addictive; (2) chose to hide that knowledge from the public; and (3) made decisions that facilitated addiction to Instagram long before Davis and Mosseri’s false testimony.

462. To briefly restate evidence described above, by September 2019, Meta knew from internal research that “[t]eens are hooked despite how [Instagram] makes them feel . . . Instagram is addictive, and time-spend on platform is having a negative impact on mental health.”

463. And after observing in May 2020 that “approval and acceptance are huge rewards for teens and interactions are the currency on [Instagram],” Meta deployed engagement-inducing platforms features, such as “[direct messages], notifications, comments, follows, likes, etc. [that] encourage teens to continue engaging and keep coming back to the app.”

464. Consequently, through Davis and Mosseri’s Congressional testimony, Meta affirmatively misled the public—including Nevada consumers—about the addictive nature of the Instagram platform. This is a material misrepresentation, as reasonable consumers, parents, and guardians would be less likely to trust an addictive platform.

V. META ACTIVELY ALLOWS ITS YOUNGEST USERS TO CREATE AND MAINTAIN ACCOUNTS DESPITE PUBLICLY CLAIMING THOSE UNDER-13 ARE NOT ALLOWED ON META’S PLATFORMS

465. Meta’s disregard for the health and well-being of its Young Users is even more repugnant because its *Youngest* Users include children under age 13, who are prohibited from having accounts on Meta’s platforms without verified consent from parents prior to collecting personal information of those under age 13.

466. Meta routinely obtains actual knowledge that its Youngest Users are on Meta’s platforms without parental consent.

467. Meta surreptitiously and unfairly targets very young individuals to become users of its Platforms, including Instagram, making the platforms directed to children.

468. Instead of obtaining verifiable parental consent, Meta relies on nominal bans on users under age 13 to avoid any responsibility to the Youngest User and their

parents.⁴⁰¹ But, Meta’s own record reveals that it has actual knowledge that its platforms target and successfully allow very young users on the platforms, including those under 13.

469. Meta’s extensive internal records documenting its actual knowledge of very young Instagram users, in violation of their own policies, include the following: (i) internal communications and data revealing the existence of Under-13 users on Facebook; (ii) internal communications revealing that Instagram’s weak age-gating process effectively and predictably welcomes children onto the platform; and (iii) data generated by Meta’s age-estimation algorithms confirming that millions of individual Instagram accounts belong to Under-13 children.⁴⁰²

470. An internal presentation titled “2017 Teens Strategic Focus” outlines Meta’s plans to “win back” the teen market by specifically targeting the U13 market.⁴⁰³ The presentation has slides documenting the following information about U13 users: “significant tablet usage starts at 3-4”, “Smartphones dominate from age 10,” and “Social identity is an Unmet need Ages 5-11.”⁴⁰⁴ Another stated

⁴⁰¹ MT-IG-AG-00000329 (pg. 35)

⁴⁰² MT-IG-AG-00038749 (Graph showing % of teens by stated age and predicted age compared to labeled BD Shows that < 20% of 13-year-old users have a stated age of 13, while the model predicts that ~75% of these users are 13 years old. Suggests that Meta’s age prediction model is significantly more accurate at predicting age than stated age and that Meta knew users were lying about their age.)

⁴⁰³ MT-IG-AG-00189923 (pgs. 11-13); *see also* MT-IG-AG-00218207 (pg. 16) (another document on how to win teens with teen focused creators)

⁴⁰⁴ MT-IG-AG-00189923 (pgs. 11-13)

goal was to build a U13 product to “grow MAP, DAP and time spent among U13 kids.”⁴⁰⁵

471. Meta is also aware that its registration process for Facebook does not prevent Youngest Users from creating Instagram accounts—and that it effectively welcomes them onto the platform despite nominally prohibiting them.

472. Despite its public-facing claims that Youngest Users are not allowed on Instagram, Meta’s private internal documents revealed that Meta has coveted and pursued the under-13 Instagram user demographic for years.

473. As an internal Meta “pre-read” document, from 2018, Meta acknowledges, “we do very little to keep U13s off our platform.”⁴⁰⁶ While still publicly claiming that Meta does not allow these youngest users to create and maintain accounts on its Platforms, Meta clearly does.

474. Meta also acquired actual knowledge of specific under-13 accounts through external complaints regarding users under the age of 13 on Instagram. In these instances, Meta did not meaningfully enforce its nominal age-restriction on Instagram, despite external claims to the contrary.⁴⁰⁷

475. Upon information and belief, Meta has confirmed its knowledge of specific under age 13 user accounts

⁴⁰⁵ MT-IG-AG-00189923 (pg. 20)

⁴⁰⁶ MT-IG-AG-00222325 (pg. 10)

⁴⁰⁷ MT-IG-AG-00000329 (pg. 17) (Antigone Davis testifying “we also allow people to report underage accounts, even if you’re not on Facebook, and we will remove them.”)

through its review of data generated by Meta's age-estimation algorithms confirming that millions of individual Facebook accounts belong to children under age 13.

476. In sum, Meta actively pursued users under 13 despite public statements to the contrary, failed to effectively exclude under age 13 users from using its platforms, and acquired actual knowledge that specific children were on its platforms when concerned parents, siblings, teachers, and community members told Meta about individual children on its platform(s). Still, Meta declined to remove many of those children's accounts and continued to falsely reassure the public that Meta does not allow under age 13 users on its platforms.

477. Children under the age of 13 are particularly vulnerable to the harms caused by Defendants' social media platforms, and Meta's conduct violates longstanding societal norms meant to protect children, and to preserve parents' autonomy to ensure the same.

CAUSES OF ACTION

COUNT I: DECEPTIVE ACTS OR PRACTICES BY DEFENDANTS IN VIOLATION OF NEVADA'S DECEPTIVE TRADE PRACTICES ACT

(N.R.S. §§ 598.0903 THROUGH 598.0999)

478. Plaintiff repeats and realleges the preceding paragraphs of this Complaint as if fully set forth herein.

479. The Attorney General is authorized to bring an action—independently in the name of the State as well as in a *parens patriae* capacity on behalf of the persons residing in Nevada—to remedy violations of the Deceptive Trade Practices Act. *See, e.g.*, NRS 598.0963 and 598.0999.

480. At all times relevant herein, the Defendants violated the Nevada Deceptive Trade Practices Act, §§ 598.0903 to 598.0999, by repeatedly and willfully committing deceptive acts or practices, in the conduct of commerce, which are violations of the Act.

481. The Attorney General is authorized to bring an action in the name of the State to remedy violations of the Deceptive Trade Practices Act. NRS §§ 598.0999. This action is proper in this Court because Defendants are using, have used, and/or are about to use practices that are unlawful under the Act. NRS § 598.0915(5).

482. Defendants willfully committed deceptive trade practices because of false representations as well as omission of material facts. *See* NRS § 598.0915(5); *see also* §§ 598.0915(2) (“[k]nowingly makes a false representation as to the source, sponsorship, approval or certification of goods or services for sale . . .”), 598.0915(3) (“[k]nowingly makes a false representation as to affiliation, connection, association with or certification by another person”), and 598.0915(15) (“[k]nowingly makes any other false representation in a transaction”).

483. Defendants acted knowingly under Nevada law, which states that under the NDTPA, “‘knowingly’ means that the defendant is aware that the facts exist that constitute the act or omission.” *Poole v. Nev. Auto Dealership Invs., LLC*, 2019 Nev. App. LEXIS 4, *2. Similarly, “a ‘knowing[]’ act or omission under the NDTPA does not require that the defendant intend to deceive with the act or omission, or even know of the prohibition against the act or omission, but simply that the defendant is aware that the facts exist that constitute the act or omission.” *Id.* at *8 (alteration original).

484. As set forth in Sections IV and V, *supra*, Defendants knowingly failed to disclose the material facts concerning the true nature of the risks of harm posed to Young Users on Instagram.

485. As set forth in Sections IV and V, *supra*, Defendants knowingly misrepresented to regulators and the public that Instagram was safe for Young Users, and prioritized the wellbeing of Young Users, when in fact Defendants knew that those representations were false.

486. As set forth in Sections IV and V, *supra*, Defendants, at all times relevant to this Complaint, willfully violated the Deceptive Trade Practices Act by committing deceptive trade practices by representing that Instagram “ha[s] . . . characteristics, . . . uses, [or] benefits” that it does not have. NRS § 598.0915(5).

487. As set forth in Sections IV and V, *supra*, Defendants willfully committed further deceptive trade practices by causing confusion or misunderstanding as to the safety and risks associated with the Instagram social media platform. NRS § 598.0915(2).

488. As set forth in Sections IV and V, *supra*, Defendants willfully committed further deceptive trade practices by making “false representation as to [the] affiliation, connection, association with or certification” of Instagram. NRS § 598.0915(3).

489. As set forth in Sections IV and V, *supra*, Defendants willfully committed further deceptive trade practices by representing that Instagram was “of a particular standard, quality or grade” (to wit, designed to be safe for Young Users), despite knowing that this was not true. NRS § 598.0915(7).

490. As set forth in Sections IV and V, *supra*, Defendants willfully committed further deceptive trade practices

by representing that Instagram is safe and not harmful to Young Users' wellbeing when such representations were untrue, false, and misleading. NRS § 598.0915(15).

491. As set forth in Sections IV and V, *supra*, Defendants willfully committed further deceptive trade practices by using exaggeration and/or ambiguity as to material facts and omitting material facts, which had a tendency to deceive and/or did in fact deceive. NRS § 598.0915(15).

492. As set forth in Sections IV and V, *supra*, Defendants willfully committed further deceptive trade practices by failing to disclose a material fact in connection with the sale or lease of goods or services. Nev. Rev. Stat. Ann. § 598.0923(1)(b).

493. As set forth in Section V, *supra*, Defendants willfully committed further deceptive trade practices by violating one or more laws relating to the sale or lease of goods or services. NRS § 598.0923(1)(c).

494. As set forth in Sections IV, *supra*, Defendants willfully committed further deceptive trade practices by making false assertions of scientific, clinical or quantifiable facts in its advertisements and public statements which would cause a reasonable person to believe that such assertions were true. NRS § 598.0925(1)(a).

495. Defendants' deceptive representations, concealments, and omissions were knowingly made in connection with trade or commerce, were reasonably calculated to deceive the public and the State, were statements that may deceive or tend to deceive, were willfully used to deceive the public and the State, and did in fact deceive the public and the State.

496. As described more specifically above, Defendants' representations, concealments, and omissions constitute a willful course of conduct which continues to this

day. Unless enjoined from doing so, Defendants will continue to violate the Nevada Deceptive Trade Practices Act.

497. But for these representations, concealments, and omissions of material fact, Nevada's Young User citizens (and their families) would not have suffered the harms detailed herein.

498. Defendants' deceptive trade practices are willful and subject to a civil penalty and equitable relief. NRS § 598.0999.

499. Because Defendants' deceptive trade practices are toward minors, Defendants are subject to additional civil penalties and equitable relief. NRS § 598.09735.

500. Each exposure of a Nevada Young User to Instagram resulting from the aforementioned conduct of each Defendant constitutes a separate violation of the Nevada Deceptive Trade Practices Act.

501. Plaintiff, State of Nevada, seeks all legal and equitable relief as allowed by law, including *inter alia* injunctive relief and all recoverable penalties under all sections of the Deceptive Trade Practices Act including all civil penalties per each violation, attorney fees and costs, and pre- and post-judgment interest.

COUNT II: UNCONSCIONABLE ACTS OR PRACTICES BY DEFENDANTS IN VIOLATION OF NEVADA'S DECEPTIVE TRADE PRACTICES ACT (N.R.S. §§ 598.0903 THROUGH 598.0999)

499. Plaintiff repeats and realleges the preceding paragraphs of this Complaint as if fully set forth herein.

500. The Attorney General is authorized to bring an action—independently in the name of the State as well as

in a *parens patriae* capacity on behalf of the persons residing in Nevada—to remedy violations of the Deceptive Trade Practices Act. *See, e.g.*, NRS 598.0963 and 598.0999.

501. At all times relevant herein, Defendants violated the Nevada Deceptive Trade Practices Act, §§ 598.0903 to 598.0999, by repeatedly and willfully committing unconscionable trade practices, in the conduct of commerce, which are violations of the Act.

502. The Attorney General is authorized to bring an action in the name of the State to remedy violations of the Deceptive Trade Practices Act. NRS §§ 598.0999. This action is proper in this Court because Defendants are using, have used, and/or are about to use practices that are unlawful under the Act. NRS § 598.0915(5).

503. As set forth in Sections I-III, *supra*, Defendants willfully committed unconscionable trade practices in designing and deploying the Design Elements on the Instagram social media platform. Such conduct violates the NDTPA’s prohibition of knowingly using “an unconscionable practice in a transaction.” NRS § 598.0923(1)(e).

504. Defendants acted knowingly under Nevada law, which states that under the NDTPA, “‘knowingly’ means that the defendant is aware that the facts exist that constitute the act or omission.” *Poole v. Nev. Auto Dealership Invs., LLC*, 2019 Nev. App. LEXIS 4, *2. Similarly, “a ‘knowing[]’ act or omission under the NDTPA does not require that the defendant intend to deceive with the act or omission, or even know of the prohibition against the act or omission, but simply that the defendant is aware that the facts exist that constitute the act or omission.” *Id.* at *8 (alteration original).

505. The Design Elements identified in Sections I-III, *supra*, are “unconscionable trade practices” because they

(1) “[t]ake[] advantage of the lack of knowledge, ability, experience or capacity of the consumer to a grossly unfair degree;” and (2) “[r]esult[] in a gross disparity between the value received and the consideration paid, in a transaction involving transfer of consideration.” NRS § 598.0923(2)(b)(1)-(2).

506. NRS § 598.0923(2)(b)(1): As discussed, *supra*, the Design Elements represent a vast asymmetry in sophistication and knowledge between Defendants, on the one hand, who have devoted extensive time, energy, and resources in identifying ways in which Young Users may be manipulated and exploited into compulsive use of Instagram; and Young Users (and their caretakers), on the other hand, who do not—and could not be expected to—have the same fundamental and sophisticated knowledge of behavioral psychology, biology of young people, and social media platform design principles. This asymmetry in knowledge is compounded by the fact that Defendants knowingly and intentionally hide, obscure, or minimize critical information, preventing public access to anything that might be damaging to their reputation and that would alert the public to the harms identified herein.

507. NRS § 598.0923(2)(b)(2): Further, as discussed, *supra*, use of the Instagram platform is a transaction that involves consideration (exemplified by the fact that Defendants seek to bind Young Users to, *inter alia*, a contract in the form of Instagram’s Terms of Use). Due to the harms identified herein that afflict Young Users as a result of using Instagram, and which are the result of the Design Elements deployed by Instagram for purposes of inducing compulsive use of the platform, the disparity between the value received and the consideration paid is so vast as to be unconscionable.

508. As described more specifically above, Defendants' conduct is willful and continues to this day. Unless enjoined from doing so, Defendants will continue to violate the Nevada Deceptive Trade Practices Act.

509. But for this unconscionable conduct, Nevada's Young User citizens would not have suffered the harms detailed herein.

510. Defendants' unconscionable practices are willful and subject to a civil penalty and equitable relief. NRS § 598.0999.

511. Because Defendants' unconscionable practices are toward minors, Defendants are subject to additional civil penalties and equitable relief. NRS § 598.09735.

512. Each exposure of a Nevada Young User to Instagram resulting from Defendants' aforementioned conduct constitutes a separate violation of the Nevada Deceptive Trade Practices Act.

513. Plaintiff, State of Nevada, seeks all legal and equitable relief as allowed by law, including *inter alia* injunctive relief and all recoverable penalties under all sections of the Nevada Deceptive Trade Practices Act including all civil penalties per each violation, attorney fees and costs, and pre- and post-judgment interest.

COUNT III: PRODUCT LIABILITY – DESIGN DEFECT

512. Plaintiff repeats and realleges the preceding paragraphs of this Complaint as if fully set forth herein.

513. The Attorney General is authorized to bring an action—independently in the name of the State as well as in a *parens patriae* capacity on behalf of the persons residing in Nevada—to remedy violations of Nevada law.

514. Defendants created and maintain Instagram, and therefore are manufacturers of Instagram.

515. As set forth in Sections I-III, *supra*, Instagram has a design defect (the Design Elements) that renders it unreasonably dangerous. Specifically, Instagram failed to perform in the manner reasonably to be expected in light of its nature and intended function and was more dangerous than would be contemplated by the ordinary user having the ordinary knowledge available in the community.

516. As set forth in Sections I-III, *supra*, the defect existed at all times relevant hereto, including the time the product left the manufacturer (*i.e.*, Defendants).

517. As set forth, *supra*, the defect caused injury to Young Users in Nevada.

518. As a result of Defendants' conduct, the State is entitled to—and does—seek damages (including punitive damages) in an amount to be proven at trial.

COUNT IV: PRODUCT LIABILITY – FAILURE TO WARN

518. Plaintiff repeats and realleges the preceding paragraphs of this Complaint as if fully set forth herein.

519. The Attorney General is authorized to bring an action—independently in the name of the State as well as in a *parens patriae* capacity on behalf of the persons residing in Nevada—to remedy violations of Nevada law.

520. Defendants created and maintain Instagram, and therefore are manufacturers of Instagram.

521. As set forth in Sections I-V, *supra*, Instagram has a defective warning that renders it unreasonably dangerous. Any and all representations, misrepresentations,

and omissions made in relation thereto that Defendants made regarding the suitability and safety of Instagram for Young Users have not been accompanied by suitable and adequate warnings concerning its safe and proper use.

522. As set forth in Sections I-V, *supra*, Defendants had reason to anticipate that a particular use of Instagram—*i.e.*, its use by Young Users—may be dangerous without such warnings.

523. As set forth in Sections I-V, *supra*, any warning that Defendants made in connection with Young Users' use of Instagram was not (1) designed so it can reasonably be expected to catch the attention of the consumer; (2) be comprehensible and give a fair indication of the specific risks involved with the product; and (3) be of an intensity justified by the magnitude of the risk.

524. As set forth in Sections I-V, *supra*, the defective warning existed at all times relevant hereto, including the time the product left the manufacturer (*i.e.*, Defendants).

525. As set forth in Sections I-V, *supra*, the defect caused injury to Young Users in Nevada.

526. As a result of Defendants' conduct, the State is entitled to—and does—seek damages (including punitive damages) in an amount to be proven at trial.

COUNT V: NEGLIGENCE

526. Plaintiff repeats and realleges the preceding paragraphs of this Complaint as if fully set forth herein.

527. The Attorney General is authorized to bring an action—independently in the name of the State as well as in a *parens patriae* capacity on behalf of the persons residing in Nevada—to remedy violations of Nevada law.

528. Defendants had and continue to have a duty to exercise reasonable care in designing, implementing, maintaining, and otherwise introducing Instagram into the stream of commerce.

529. This duty of reasonable care extends to Young Users in the State of Nevada.

530. As set forth in Sections I-V, *supra*, Defendants breached that duty.

531. As a result of Defendants' breach of that duty, Young Users in Nevada have been injured.

532. Defendants' conduct was the legal cause of that injury.

533. As set forth in Sections I-V, *supra*, Defendants' conduct was willful, wanton, malicious, reckless, oppressive, and/or fraudulent.

534. Plaintiff, the State of Nevada, seeks all legal and equitable relief as allowed by law, including *inter alia* injunctive relief, restitution, disgorgement of profits, compensatory and punitive damages, and all damages allowed by law to be paid by the Defendants, attorney fees and costs, and pre- and post-judgment interest.

COUNT VI: UNJUST ENRICHMENT

534. Plaintiff repeats and realleges the preceding paragraphs of this Complaint as if fully set forth herein.

535. The Attorney General is authorized to bring an action—independently in the name of the State as well as in a *parens patriae* capacity on behalf of the persons residing in Nevada—to remedy violations of Nevada law.

536. Young Users in the State of Nevada have conferred a benefit on Defendants in the form of being a monetizable audience (providing not just an opportunity for

Defendants to sell advertisements, but also for Defendants to acquire sensitive and valuable personal data associated with Young Users; as well as for all other reasons that Defendants have described a monetary value to Young Users).

537. Defendants knew of the benefits conferred.

538. Defendants accepted the benefits conferred.

539. It would be unjust to allow Defendants to retain the benefits conferred without paying their reasonable value.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully prays that the Court grant the following relief:

A. On the First Cause of Action, Judgment in favor of the State and against Defendants declaring that all acts and omissions of the Defendants described in this Complaint constitute multiple, separate violations of the Deceptive Trade Practices Act and that thereby Defendants willfully and knowingly violated the Nevada Deceptive Trade Practices Act, NRS §§ 598.0903 to 598.0999;

B. On the Second Cause of Action, Judgment in favor of the State and against Defendants declaring that all acts and omissions of the Defendants described in this Complaint constitute multiple, separate violations of the Deceptive Trade Practices Act and that Defendants willfully and knowingly violated the Nevada Deceptive Trade Practices Act, NRS §§ 598.0903 to 598.0999;

C. On the Third Cause of Action, Judgment in favor of the State and against Defendants that Defendants' challenged social media platform contains one or more design defects that caused damages as alleged herein;

D. On the Fourth Cause of Action, Judgment in favor of the State and against Defendants that Defendants failed to provide adequate warnings about the challenged social media platform and that failure caused damages as alleged herein;

E. On the Fifth Cause of Action, Judgment in favor of the State and against Defendants that Defendants' negligence caused damages as alleged herein;

F. On the Sixth Cause of Action, Judgment in favor of the State and against Defendants that Defendants were unjustly enriched as alleged herein;

G. That Plaintiff recover all measures of damages allowable under all applicable State statutes and the common law, but in any event more than \$15,000, that Judgment be entered against Defendants in favor of Plaintiff, and requiring that Defendant pay punitive damages;

H. That Defendants be ordered to pay civil penalties pursuant to the Deceptive Trade Practices Act including disgorgement and civil penalties of up to \$15,000 for each violation of the Deceptive Trade Practices Act, and up to \$25,000 for each violation of the Deceptive Trade Practices Act directed toward a minor person;

I. That Plaintiff be awarded all injunctive, declaratory, and other equitable relief appropriate and necessary based on the allegations herein;

J. That, in accordance with the Nevada Deceptive Trade Practices Act, Defendants, their affiliates, successors, transferees, assignees, and the officers, directors, partners, agents, and employees thereof, and all other persons acting or claiming to act on their behalf or in concert with them, be enjoined and restrained from in any manner continuing, maintaining, or renewing the conduct, alleged herein in violation of the above stated Nevada

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laws, or from entering into any other act, contract, or conspiracy having a similar purpose or effect;

K. That Plaintiff recover the costs and expenses of suit, pre- and post-judgment interest, and reasonable attorneys' fees as provided by law; and

L. That the Court order such other and further relief as the Court deems just, necessary, and appropriate.

JURY DEMAND

Pursuant to NRCP 38(b), Plaintiff hereby demands a trial by jury on all issues so triable.

Dated January 30, 2024

APPENDIX F

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Const. Amend. I provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

2. 47 U.S.C. § 230 provides:

(a) Findings

The Congress finds the following:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b) Policy

It is the policy of the United States—

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c) Protection for “Good Samaritan” blocking and screening of offensive material

(1) Treatment of publisher or speaker

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) Civil liability

No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

(d) Obligations of interactive computer service

A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(e) Effect on other laws**(1) No effect on criminal law**

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal criminal statute.

(2) No effect on intellectual property law

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) State law

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(4) No effect on communications privacy law

Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(5) No effect on sex trafficking law

Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit—

(A) any claim in a civil action brought under section 1595 of title 18, if the conduct underlying the claim constitutes a violation of section 1591 of that title;

(B) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 1591 of title 18; or

(C) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 2421A of title 18, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted.

(f) Definitions

As used in this section:

(1) Internet

The term “Internet” means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) Interactive computer service

The term “interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) Information content provider

The term “information content provider” means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

(4) Access software provider

The term “access software provider” means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

- (A) filter, screen, allow, or disallow content;
- (B) pick, choose, analyze, or digest content; or
- (C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.