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Judicial Council of California
SEP 15 2022

Coordination Lawyer

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7 Additional counsel on signature page.

8 **JUDICIAL COUNCIL OF CALIFORNIA**
9 **CHAIR OF THE JUDICIAL COUNCIL**

10 LAURA ASHMAN,) Judicial Council Coordination Proceeding JCCP
11) No. _____
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13)
14) San Mateo County Superior Court Case No.
15) 22-CIV-03178
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17) San Mateo County Superior Court Case No.
18) 22-CIV-03479
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20) San Mateo County Superior Court Case No.
21) 22-CIV-03480
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23) San Mateo County Superior Court Case No.
24) 22-CIV-03479
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26) San Mateo County Superior Court Case No.
27) 22-CIV-03588
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29) Trinity County Superior Court Case No.
30) 22-CIV-066
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32) San Mateo County Superior Court Case No.
33) 22-CIV-03731
34)
35) San Mateo County Superior Court Case No.
36) pending
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38) San Francisco County Superior Court Case No.
39) pending
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41)
42) **PETITION FOR COORDINATION AND**
43) **SUPPORTING MEMORANDUM OF**
44) **POINTS AND AUTHORITIES**
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1 CHESAPEAKE DOWDY,

2
3 Plaintiff,

4 vs.

5 INSTAGRAM LLC and META PLATFORMS,
6 INC., f/k/a FACEBOOK, INC.,

7 Defendants.

8 BRIANA PEREZ,

9
10 Plaintiff,

11 vs.

12 INSTAGRAM LLC and META PLATFORMS,
13 INC., f/k/a FACEBOOK, INC.,

14 Defendants.

15 TAYLOR LITTLE,

16
17 Plaintiff,

18 vs.

19 INSTAGRAM LLC and META PLATFORMS,
20 INC., f/k/a FACEBOOK, INC.,

21 Defendants.

22 L.F., A MINOR, BY AND THROUGH HIS
23 GUARDIAN AD LITEM, JANE DOE

24
25 Plaintiff,

26 vs.

27 INSTAGRAM LLC and META PLATFORMS,
28 INC., f/k/a FACEBOOK, INC.,

Defendants.

1 SARAH GOINS,)
)
 2 Plaintiff,)
)
 3 vs.)
)
 4 INSTAGRAM LLC; META PLATFORMS,)
 5 INC., f/k/a FACEBOOK, INC., AND MARK)
 6 ELLIOT ZUCKERBERG,)
)
 7 Defendants.)

8
 9 **PLEASE TAKE NOTICE** that, pursuant to California Code of Civil Procedure section
 10 404, *et seq.*, and California Rules of Court 3.500, *et seq.*, Plaintiffs and Petitioners Laura Ashman,
 11 Jasmine Baker, Camara Dodd, Chesapeake Dowdy, Briana Perez, Taylor Little, L.F., and Sarah
 12 Goins (“Petitioners”), by and through their counsel, Wagstaffe, von Loewenfeldt, Busch & Radwick
 13 LLP, 100 Pine Street, Suite 2250, San Francisco, California 94111, respectfully submit this Petition
 14 to the Chair of the Judicial Council to coordinate the actions listed below, for all pretrial purposes
 15 only.

16 **PLEASE TAKE FURTHER NOTICE** that any written opposition or response to the
 17 herein Petition must be filed and served at least nine (9) court days before the hearing date set on
 18 this Petition. A hearing on this Petition for coordination is hereby requested.

19 All the proposed included actions involve allegations that Defendants designed, developed,
 20 manufactured, marketed, advertised, promoted, and distributed the product known as Instagram to
 21 pre-teen and teenage consumers throughout the State of California. Plaintiffs allege that Defendants
 22 ignored and concealed safety risks of the Instagram product and failed to provide any warnings that
 23 Instagram is designed to be addictive or that minors’ use of Instagram can lead to serious harm.
 24 Plaintiffs and Petitioners herein are individual consumers who suffered damages as a result of their
 25 addiction to the product by, inter alia, developing eating disorders, suicidal ideations, major
 26 depressive disorder, generalized anxiety disorder, self-harming behaviors, and related mental health
 27 problems. All the proposed included actions further allege that Defendants’ actions are the direct
 28 and proximate cause of these harms. Petitioners seek to coordinate the cases listed below as well as

1 future complex-designated cases filed in the State of California against the same Defendants
2 alleging the same violations based on identical or virtually identical facts that constitute the subject
3 of the herein petition.

4 1. *ASHMAN v. INSTAGRAM LLC and META PLATFORMS, INC., f/k/a FACEBOOK,*
5 *INC.*, San Mateo Superior Court Case No. 22-CIV-03178, filed August 4, 2022, designated as
6 provisionally complex, assigned to Hon. Robert D. Foiles, Dept. 21, San Mateo County Superior
7 Court;

8 2. *BAKER v. INSTAGRAM LLC and META PLATFORMS, INC., f/k/a FACEBOOK,*
9 *INC.*, San Mateo Superior Court Case No. 22-CIV-03480, filed August 26, 2022, designated as
10 provisionally complex, assigned to Hon. Marie S. Weiner, Dept. 2, San Mateo County Superior
11 Court;

12 3. *DODD v. INSTAGRAM LLC and META PLATFORMS, INC., f/k/a FACEBOOK,*
13 *INC.*, San Mateo Superior Court Case No. 22-CIV-03479, filed August 26, 2022, designated as
14 provisionally complex, assigned to Hon. Danny Y. Chou, Dept. 22, San Mateo County Superior
15 Court;

16 4. *DOWDY v. INSTAGRAM LLC and META PLATFORMS, INC., f/k/a FACEBOOK,*
17 *INC.*, San Mateo County Superior Court Case No. 22-CIV-03588, filed September 2, 2022,
18 designated as provisionally complex, assigned to Hon. V. Raymond Swope, Dept. 23, San Mateo
19 County Superior Court;

20 5. *PEREZ v. INSTAGRAM LLC and META PLATFORMS, INC., f/k/a FACEBOOK,*
21 *INC.*, Trinity County Superior Court Case No. 22-CIV-066, filed September 2, 2022, designated as
22 provisionally complex, assigned to Dept. 2, Trinity County Superior Court;

23 6. *LITTLE v. INSTAGRAM LLC and META PLATFORMS, INC., f/k/a FACEBOOK,*
24 *INC.*, San Mateo County Superior Court Case No. 22-CIV-03731, filed September 13, 2022,
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1 designated as provisionally complex, assigned to Hon. Danny Y. Chou, Dept. 22, San Mateo
2 County Superior Court;

3 7. *L.F., a minor by and through his guardian ad litem JANE DOE v. INSTAGRAM LLC*
4 *and META PLATFORMS, INC., f/k/a FACEBOOK, INC.*, San Mateo County Superior Court, case
5 number pending, filed September 15, 2022, designated as provisionally complex, judicial assignment
6 pending, San Mateo County Superior Court.

7
8 8. *GOINS v. INSTAGRAM LLC; META PLATFORMS, INC., f/k/a FACEBOOK, INC.;*
9 *and MARK ELIOT ZUCKERBERG*, San Francisco County Superior Court, case number pending,
10 filed September 15, 2022, designated as provisionally complex, judicial assignment pending, San
11 Francisco County Superior Court.

12
13 Petitioners are not aware of any other actions currently designated complex filed in the State
14 of California that share common questions of law or fact. Petitioners are aware of multiple actions
15 filed in the State of California that raise allegations against Instagram LLC and/or Meta Platforms,
16 Inc., f/k/a Facebook, Inc. (“Meta”).¹ See Decl. of James M. Wagstaffe (“Wagstaffe Decl.”) ¶ 8.
17 However, such actions were *not* designated complex by Plaintiffs and the proper fees for a complex
18 case were not paid in such actions.² Moreover, these actions allege claims against Defendants other
19 than Meta, Instagram LLC, and/or Zuckerberg—including but not limited to Tik Tok; Snap, Inc.;
20 Google; Siculus, Inc.; and natural person defendants. As such, they are not amenable to
21 coordination. See Cal. Code. Civ. Proc. § 404.

22 This Petition for Coordination (the “Petition”) is made pursuant to Section 404 of the
23 California Code of Civil Procedure and Rule 3.521 of the California Rules of Court (“CRC”) on the
24
25

26
27 ¹ See, e.g., *D.S., K.R., and K.S. v. TikTok, Inc., ByteDance Inc., and Does 1 - 100, Inclusive*, Los Angeles Superior Court
Case No. 22STCV 24332 (July 28, 2022).

28 ² See Cal. Gov’t. Code § 70616(a) (“[A] single complex case fee shall be paid to the clerk on behalf of all plaintiffs,
whether filing separately or jointly, either at the time of the filing of the first paper if the case is designated as complex
pursuant to the California Rules of Court”).

1 ground that one judge hearing all actions for all pretrial purposes will promote the ends of justice
2 for the following reasons:

- 3 • All the cases allege identical or virtually identical legal and factual theories;
- 4 • All the cases were brought against Meta, Instagram, and/or their CEO Mark Zuckerberg,
5 who are represented or expected to be represented by the same counsel;
- 6 • Coordination will further the efficient utilization of judicial resources and avoid the
7 unnecessary duplication and waste of judicial resources;
- 8 • Coordination will further the convenience of the parties, witnesses, and counsel;
- 9 • Coordination will avoid duplicative or inconsistent rulings and orders; and
- 10 • Coordination will increase the possibility of settlement of the disputed matters.


11 Satisfaction of such grounds is more particularly set forth in the Memorandum of Points and
12 Authorities below, the accompanying Declaration of James M. Wagstaffe, and other supporting
13 documents submitted herewith. The actions sought to be coordinated fall within the definition of
14 “complex litigation” under Section 19 of the Standards of Judicial Administration and Rule 3.4000
15 *et seq.*, of the CRC. *See* Wagstaffe Decl. ¶ 7.

16 Proof of filing in each included action of a Notice of Submission of Petition for Coordination
17 and a copy of this Petition, pursuant to Rule 3.522 of the CRC, and any documents to be submitted
18 pursuant to Rule 3.523 of the CRC, will be submitted to the Chair of the Judicial Council within the
19 time frames provided by Rules 3.522 and 3.523.

20 Petitioners respectfully request that the San Mateo County Superior Court be assigned to
21 determine whether coordination of the above-captioned actions is appropriate.

22 Dated: September 15, 2022

23 Respectfully Submitted,

24 
25 _____

26 **MOTLEY RICE LLC**

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jcolombo@motleyrice.com

18 **PRO HAC VICE APPLICATIONS TO*
19 *BE FILED*

20 *Additional Attorneys for Petitioners*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 California law authorizes the coordination of complex cases pending in different courts
4 whenever they share a common question of law or fact. Cal. Civ. Proc. Code § 404. The statute
5 seeks to coordinate these types of cases to promote the efficient use of judicial resources and to
6 facilitate resolution of all actions. Cal. Civ. Proc. Code § 404.1. Petitioners seek to coordinate the
7 following complex actions:

8 1. *ASHMAN v. INSTAGRAM LLC and META PLATFORMS, INC., f/k/a FACEBOOK,*
9 *INC.*, San Mateo Superior Court Case No. 22-CIV-03178, filed August 4, 2022, designated as
10 provisionally complex, assigned to Hon. Robert D. Foiles, Dept. 21, San Mateo County Superior
11 Court;

12 2. *BAKER v. INSTAGRAM LLC and META PLATFORMS, INC., f/k/a FACEBOOK,*
13 *INC.*, San Mateo Superior Court Case No. 22-CIV-03480, filed August 26, 2022, designated as
14 provisionally complex, assigned to Hon. Marie S. Weiner, Dept. 2, San Mateo County Superior
15 Court;

16 3. *DODD v. INSTAGRAM LLC and META PLATFORMS, INC., f/k/a FACEBOOK,*
17 *INC.*, San Mateo Superior Court Case No. 22-CIV-03479, filed August 26, 2022, designated as
18 provisionally complex, assigned to Hon. Danny Y. Chou, Dept. 22, San Mateo County Superior
19 Court;

20 4. *DOWDY v. INSTAGRAM LLC and META PLATFORMS, INC., f/k/a FACEBOOK,*
21 *INC.*, San Mateo County Superior Court Case No. 22-CIV-03588, filed September 2, 2022,
22 designated as provisionally complex, assigned to Hon. V. Raymond Swope, Dept. 23, San Mateo
23 County Superior Court;

24 5. *PEREZ v. INSTAGRAM LLC and META PLATFORMS, INC., f/k/a FACEBOOK,*
25 *INC.*, Trinity Superior Court Case No. 22-CIV-066, filed September 2, 2022, designated as
26 provisionally complex, assigned to Dept. 2, Trinity County Superior Court.
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28

1 6. *LITTLE v. INSTAGRAM LLC and META PLATFORMS, INC., f/k/a FACEBOOK,*
2 *INC.*, San Mateo County Superior Court Case No. 22-CIV-03731, filed September 13, 2022,
3 designated as provisionally complex, assigned to Hon. Danny Y. Chou, Dept. 22, San Mateo
4 County Superior Court;

5 7. *L.F.. a minor by and through his guardian ad litem v. INSTAGRAM LLC and META*
6 *PLATFORMS, INC., f/k/a FACEBOOK, INC.*, San Mateo County Superior Court Case, case number
7 pending, filed September 15, 2022, designated as provisionally complex, San Mateo County Superior
8 Court; and

9 8. *GOINS v. INSTAGRAM LLC; META PLATFORMS, INC., f/k/a FACEBOOK, INC.;*
10 *and MARK ELIOT ZUCKERBERG*, San Francisco County Superior Court Case, case number
11 pending, filed September 15, 2022, designated as provisionally complex, San Francisco County
12 Superior Court.
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15 All of these actions have been provisionally designated as complex and are in fact complex
16 pursuant to CRC 3.400(b). Coordinating them “will promote the ends of justice,” Cal. Civ. Proc.
17 Code §§ 404 and 404.1, for several reasons detailed below. In short, the subject actions all present
18 identical allegations against the same set of Defendants predicated on the same conduct related to
19 the same product (Instagram). They are likely to present the same difficult or novel legal issues,
20 which will be time-consuming to resolve and which will benefit from the elimination of duplicative
21 motions and inconsistent rulings. Workup of these cases for trial will require depositions of dozens
22 of corporate personnel, at least a dozen experts, and scores of lay witnesses; retrieval of hundreds of
23 thousands if not millions of electronically stored documents; and extensive motion practice. As
24 such, coordination will benefit the parties, witnesses, and counsel by creating a single, streamlined
25 pretrial schedule. For these and other reasons set out below, Petitioners respectfully request that the
26 cases be coordinated.
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1 **II. FACTUAL BACKGROUND**

2 **A. The *ASHMAN* Action**

3 On August 4, 2022, Laura Ashman filed her action in San Mateo County Superior Court.
4 The action seeks recovery for Ms. Ashman’s injuries and damages as a result of developing and
5 suffering from suicidal ideation, generalized anxiety disorder, major depressive disorder, anorexia,
6 and related mental health problems. Her action alleges that these injuries and damages were
7 directly and proximately caused by the defective design of Defendants’ Instagram product. Ms.
8 Ashman’s action alleges the following causes of action:

- 9 i. Strict Product Liability – Design Defect
- 10 ii. Strict Product Liability – Failure to Warn
- 11 iii. Negligence – Design Defect
- 12 iv. Negligence – Failure to Warn
- 13 v. Negligence – Infliction of Emotional Distress
- 14 vi. Concealment

15 *See* Ex. A (Ashman Complaint) ¶¶ 130-177; Wagstaffe Decl., ¶¶ 2, 6.

16 Ms. Ashman is represented by James M. Wagstaffe and Frank Busch of Wagstaffe, von
17 Loewenfeldt, Busch & Radwick LLP and Motley Rice LLC. *See* Wagstaffe Decl., ¶¶ 2, 3. Defendant
18 Instagram, Inc. and Meta Platforms, Inc. f/k/a Facebook, Inc. are represented by Rosemarie T. Ring
19 of Gibson, Dunn and Crutcher LLP and Ashley Simonsen of Covington and Burling LLP. Both
20 Defendants have been served with the summons and complaint.

21 **B. The *BAKER* Action**

22 On August 26, 2022, Jasmine Baker filed her action in San Mateo County Superior Court.
23 Her action seeks recovery for her injuries and damages as a result of developing and suffering from
24 suicidal ideation, depression, a serious eating disorder that caused long-term damage to her
25 intestines, and multiple suicide attempts. Her action alleges that these injuries and damages were
26 directly and proximately caused by the defective design of Defendants’ Instagram product. Ms.
27 Baker’s action alleges the following causes of action:

- 28 i. Strict Product Liability – Design Defect

- ii. Strict Product Liability – Failure to Warn
- iii. Negligence – Design Defect
- iv. Negligence – Failure to Warn
- v. Negligence – Infliction of Emotional Distress
- vi. Concealment

See Ex. B at ¶¶ 130-177 (Baker Complaint), Wagstaffe Decl. ¶¶ 2, 6.

Ms. Baker is represented by James M. Wagstaffe and Frank Busch of Wagstaffe, von Loewenfeldt, Busch & Radwick LLP and Motley Rice LLC. See Wagstaffe Decl., ¶¶ 2,3. Defendant Instagram, Inc. and Meta Platforms, Inc. f/k/a Facebook, Inc. are represented by Rosemarie T. Ring of Gibson, Dunn and Crutcher LLP and Ashley Simonsen of Covington and Burling LLP. Both Defendants have been served with the summons and complaint.

C. The DODD Action

On August 26, 2022, Camara Dodd filed her action in San Mateo County Superior Court. Her action seeks recovery for her injuries and damages as a result of developing and suffering from anorexia, generalized anxiety disorder, major depressive disorder, and related mental health problems, and alleges that these injuries and damages were directly and proximately caused by Defendants’ Products. Ms. Dodd’s action alleges the following causes of action:

- i. Strict Product Liability – Design Defect
- ii. Strict Product Liability – Failure to Warn
- iii. Negligence – Design Defect
- iv. Negligence – Failure to Warn
- v. Negligence – Infliction of Emotional Distress
- vi. Concealment

See Ex. C at ¶¶ 130-177 (Dodd Complaint); Wagstaffe Decl. ¶¶ 2,6.

Ms. Dodd is represented by James M. Wagstaffe and Frank Busch of Wagstaffe, von Loewenfeldt, Busch & Radwick LLP and Motley Rice LLC. See Wagstaffe Decl. ¶¶ 2,3. Defendant Instagram, Inc. and Meta Platforms, Inc. f/k/a Facebook, Inc. are represented by Rosemarie T. Ring

1 of Gibson, Dunn and Crutcher LLP and Ashley Simonsen of Covington and Burling LLP. Both
2 Defendants have been served with the summons and complaint.

3 **D. The *DOWDY* Action**

4 On September 2, 2022, Chesapeake Dowdy filed this action in San Mateo County Superior
5 Court. The action seeks recovery for her injuries and damages as a result of developing and
6 suffering from an eating disorder, depression, and related mental health problems, and alleges that
7 such injuries and damages were directly and proximately caused by the defective design of
8 Defendants' Instagram product. Ms. Dowdy's action alleges the following causes of action:

- 9 i. Strict Product Liability – Design Defect
- 10 ii. Strict Product Liability – Failure to Warn
- 11 iii. Negligence – Design Defect
- 12 iv. Negligence – Failure to Warn
- 13 v. Negligence – Infliction of Emotional Distress
- 14 vi. Concealment

15 *See* Ex. D (Dowdy Complaint) ¶¶ 130-177, Wagstaffe Decl. ¶¶ 2, 6.

16 Ms. Dowdy is represented by James M. Wagstaffe and Frank Busch of Wagstaffe, von
17 Loewenfeldt, Busch & Radwick LLP and Motley Rice LLC. *See* Wagstaffe Decl. ¶¶ 2, 3. Defendant
18 Instagram, Inc. and Meta Platforms, Inc. f/k/a Facebook, Inc. are represented by Rosemarie T. Ring
19 of Gibson, Dunn and Crutcher LLP and Ashley Simonsen of Covington and Burling LLP. Both
20 Defendants have been served with the summons and complaint.

21 **E. The *PEREZ* Action**

22 On September 2, 2022, Briana Perez filed this action in Trinity County Superior Court. Her
23 action seeks recovery for injuries and damages as a result of developing and suffering from
24 generalized anxiety disorder, depression, body dysmorphia, suicidal ideations, and related mental
25 health illnesses including addiction. Her action alleges that such injuries and damages were directly
26 and proximately caused by Defendants' Products. Her action alleges the following causes of action:

- 27 i. Strict Product Liability – Design Defect
- 28 ii. Strict Product Liability – Failure to Warn

- 1 iii. Negligence – Design Defect
- 2 iv. Negligence – Failure to Warn
- 3 v. Negligence – Infliction of Emotional Distress
- 4 vi. Concealment

5 See Ex. E at ¶¶ 130-177 (Perez Complaint), Wagstaffe Decl. ¶¶ 2,6.

6 Ms. Perez is represented by James M. Wagstaffe and Frank Busch of Wagstaffe, von
7 Loewenfeldt, Busch & Radwick LLP and Motley Rice LLC. See Wagstaffe Decl. ¶¶ 2,3. Defendant
8 Instagram, Inc. and Meta Platforms, Inc. f/k/a Facebook, Inc. are represented by Rosemarie T. Ring
9 of Gibson, Dunn and Crutcher LLP and Ashley Simonsen of Covington and Burling LLP. Both
10 Defendants have been served with the summons and complaint.

11 **F. The *LITTLE* Action**

12 On September 13, 2022, Taylor Little filed their action in San Mateo County Superior Court.
13 Their action seeks recovery for their injuries and damages as a result of developing and suffering
14 from body dysmorphia, anorexia nervosa, major depressive disorder, generalized anxiety disorder,
15 and related mental health illnesses including addiction. They allege that such injuries and damages
16 were directly and proximately caused by the defective design of Defendants’ Instagram product.

17 Taylor Little’s action alleges the following causes of action:

- 18 i. Strict Product Liability – Design Defect
- 19 ii. Strict Product Liability – Failure to Warn
- 20 iii. Negligence – Design Defect
- 21 iv. Negligence – Failure to Warn
- 22 v. Negligence – Infliction of Emotional Distress
- 23 vi. Concealment

24 See Ex. F (Little Complaint) ¶¶ 130-177, Wagstaffe Decl. ¶¶ 2, 6.

25 Taylor Little is represented by James M. Wagstaffe and Frank Busch of Wagstaffe, von
26 Loewenfeldt, Busch & Radwick LLP and Motley Rice LLC. See Wagstaffe Decl. ¶¶ 2, 3. Defendant
27 Instagram, Inc. and Meta Platforms, Inc. f/k/a Facebook, Inc. are represented by Defendant Instagram,
28 Inc. and Meta Platforms, Inc. f/k/a Facebook, Inc. are represented by Rosemarie T. Ring of Gibson,

1 Dunn and Crutcher LLP and Ashley Simonsen of Covington and Burling LLP. Both Defendants have
2 been served with the summons and complaint.

3 **G. The L.F. Action**

4 On September 15, 2022, L.F. filed their action in San Mateo County Superior Court. Their
5 action seeks recovery for their injuries and damages as a result of developing and suffering from
6 anxiety, depression and self harm including cutting and multiple suicide attempts. They allege that
7 such injuries and damages were directly and proximately caused by the defective design of
8 Defendants' Instagram product. L.F.'s action alleges the following causes of action:

- 9 i. Strict Product Liability – Design Defect
- 10 ii. Strict Product Liability – Failure to Warn
- 11 iii. Negligence – Design Defect
- 12 iv. Negligence – Failure to Warn
- 13 v. Negligence – Infliction of Emotional Distress
- 14 vi. Concealment

15 See Ex. F (Little Complaint) ¶¶ 130-177, Wagstaffe Decl. ¶¶ 2, 6.

16 L.F. is represented by James M. Wagstaffe and Frank Busch of Wagstaffe, von Loewenfeldt,
17 Busch & Radwick LLP and Motley Rice LLC. See Wagstaffe Decl. ¶¶ 2, 3. L.F. anticipates that
18 Defendant Instagram, Inc. and Meta Platforms, Inc. f/k/a Facebook, Inc. will be represented by
19 Rosemarie T. Ring of Gibson, Dunn and Crutcher LLP and Ashley Simonsen of Covington and
20 Burling LLP.

21 **H. The GOINS Action**

22 On September 15, 2022, Sarah Goins filed her action in San Francisco County Superior
23 Court. Her action seeks recovery for her injuries and damages as a result of developing and
24 suffering from anxiety, depression, body dysmorphia, suicidal ideations, and stress-induced
25 seizures. They allege that such injuries and damages were directly and proximately caused by the
26 defective design of Defendants' Instagram product. Sarah Goins's action alleges the following
27 causes of action:

- 28 i. Strict Product Liability – Design Defect

- ii. Strict Product Liability – Failure to Warn
- iii. Negligence – Design Defect
- iv. Negligence – Failure to Warn
- v. Negligence – Infliction of Emotional Distress
- vi. Concealment

See Ex. F (Little Complaint) ¶¶ 130-177, Wagstaffe Decl. ¶¶ 2, 6.

Sarah Goins is represented by James M. Wagstaffe and Frank Busch of Wagstaffe, von Loewenfeldt, Busch & Radwick LLP and Motley Rice LLC. See Wagstaffe Decl. ¶¶ 2, 3. Goins anticipates that Defendants Instagram, Inc.; Meta Platforms, Inc. f/k/a Facebook, Inc.; and Mark Zuckerberg will be represented by Rosemarie T. Ring of Gibson, Dunn and Crutcher LLP and Ashley Simonsen of Covington and Burling LLP.

III. COORDINATION IS PROPER AND WILL PROMOTE THE ENDS OF JUSTICE

Coordination promotes “judicial efficiency and economy by providing for the unified management of both pretrial and trial phases of the coordinated case.” *Citicorp North Am., Inc. v. Sup. Ct.* (1989), 213 Cal. App. 3d 563, 565 n.3. Coordination is proper only where the actions are “complex,” as defined by the Judicial Council, and when the actions meet the coordination criteria set forth in Cal. Civ. Proc. Code § 404.1. All such elements weigh in favor of coordination for this set of cases. Petitioners respectfully request this Petition be granted.

A. The Actions Are Complex

A complex case “requires exceptional judicial management to avoid placing unnecessary burden on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel.” CRC § 3.400(a). All actions sought to be coordinated have been designated as complex litigation, satisfying the first factor for coordination. See CRC § 3.400(b)(1)-(5); Wagstaffe Decl. ¶ 7. These complex designations are proper for the following reasons.

First, each action will necessarily involve extensive motions raising difficult or novel issues that will be time-consuming to resolve. Defendants have indicated their intention to file a demurrer in the *Ashman* action which, among other defenses, may raise novel issues concerning Section 230

1 of the Communications Decency Act and the First Amendment to the United States Constitution.
2 See Defendant Meta Platforms, Inc.’s Brief in Response to Movant’s Motion for Transfer of
3 Actions Pursuant to 28 U.S.C. §1407,” Document No. 44, *In Re: Social Media Adolescent*
4 *Addiction/Personal Injury Product Liability Litigation*, MDL No. 3047 (8/30/2022).

5 *Second*, each action will involve the management of a large number of witnesses and a
6 substantial amount of documentary evidence. In the *Ashman* action, Plaintiff’s third-party subpoena
7 to former Facebook product manager Frances Haugen resulted in the production of 119 GB worth
8 of documents. That significant volume of documents precedes the trading of any documentary
9 discovery by the parties. That is to say, Ms. Haugen’s production is the tip of what is likely to be a
10 very large iceberg. As to witnesses, the allegations involve conduct by Defendants that spans a
11 decade. Accordingly, dozens of past and current employees of Meta will be involved as witnesses.
12 The allegations also reference numerous scientific and medical studies concerning the harms posed
13 by Instagram to children. See Ex. A-E ¶¶ 82-99. Many of these authors can be expected to appear
14 as fact or expert witnesses as well.

15 *Third*, these matters will necessarily involve coordination with related actions pending in
16 federal court. On September 29, 2022, the U.S. Judicial Panel on Multidistrict Litigation will hear
17 oral argument on a motion to transfer and consolidate over sixty (60) federal court actions alleging
18 that products designed and developed by Meta and Instagram are unreasonably dangerous to users.
19 See *In re Social Media Adolescent Addiction / Personal Injury Product Liability Litigation*, MDL
20 No. 3047 (J.P.M.L.), Doc. 1 at 2. Whether or not that motion to transfer is granted, the California
21 actions sought to be coordinated herein will benefit from coordination with these federal cases,
22 given that some common factual and legal issues are likely to be presented.

23 **B. The Cases Satisfy the Coordination Requirements under California Code of Civil**
24 **Procedure Section 404.1**

25 When faced with a petition to coordinate, the Court must consider (1) “whether the common
26 question of fact or law is predominating and significant to the litigation;” (2) “the convenience of
27 parties, witnesses, and counsel;” (3) “the relative development of the actions and the work product
28 of counsel;” (4) “the efficient utilization of judicial facilities and manpower;” (5) “the calendar of

1 the courts [and] the disadvantages of duplicative and inconsistent rulings, orders, or judgments;”
2 and (6) “the likelihood of settlement of the actions without further litigation should coordination be
3 denied.” Cal. Civ. Proc. Code § 404.1. A court must weigh and balance all these factors when
4 considering a petition for coordination. *Pesses v. Sup. Ct.*, 107 Cal. App. 3d 117, 125-26 (Cal. Ct.
5 App. 1980). As discussed below, all of these factors are amply satisfied here.

6 *First*, “common question[s] of fact or law [are] predominating and significant to the
7 litigation” in each of these actions. Cal. Civ. Proc. Code § 404.1. The above-captioned actions all
8 assert identical legal claims against the same Defendants concerning the same alleged deficiencies
9 with the same product. *See* Wagstaffe Decl ¶ 6; Ex. A-E, ¶¶ 130-177. Specifically, all the subject
10 actions allege that: (i) Defendants designed, developed, manufactured, marketed, advertised,
11 promoted, and distributed the product known as Instagram to pre-teen and teenage consumers
12 throughout the State of California; (ii) Defendants ignored and concealed safety risks of the
13 Instagram product; and (iii) Defendants failed to provide any warnings that Instagram is designed to
14 be addictive or that minors’ use of Instagram can lead to serious harm. Ex. A-E ¶¶ 3, 141, 150, 159,
15 166, 171, 177. Moreover, the actions all involve similar injuries. *See, e.g.* Ex. A-E ¶ 158. All the
16 Petitioners are individual consumers who suffered damages as a direct and proximate result of their
17 addiction to the Instagram product by, inter alia, developing eating disorders, suicidal ideations,
18 major depressive disorder, generalized anxiety disorder, self-harming behaviors, and/or related
19 mental health problems.

20 *Second*, coordination will best serve “the convenience of parties, witnesses, and counsel.”
21 *Id.* The same witnesses are likely to be relevant to each of the above-captioned actions, including
22 the same employees at Meta knowledgeable about the defective design of the Instagram algorithm.
23 It makes no sense to require each of these witnesses to be deposed multiple times in multiple
24 proceedings on the same subjects. The convenience of parties’ counsel would similarly be furthered
25 by coordination. The Defendants are represented by the same counsel in each action, as are the
26 Petitioners. It would benefit counsel to operate under one discovery and pretrial schedule rather
27 than having to juggle several. *See, e.g., McGhan Med. Corp. v. Sup. Ct.*, 11 Cal. App. 4th 804, 814
28 (Cal. Ct. App. 1992) (“The preparation for trial in terms of depositions, interrogatories, admissions

1 . . . will be better achieved if done in a coordinated manner.”). And the parties stand to benefit from
2 coordination as well, which will prevent the costly and time-consuming adjudication of the same or
3 substantially similar dispositive and evidentiary motions.

4 *Third*, the relative development of the actions weighs in favor of coordination. A petition for
5 coordination “may be made at any time after filing of the complaint.” Cal. Civ. Proc. Code
6 § 3.521(a). Coordination is appropriate now because each Petitioner recently filed a complaint to
7 which Defendants have yet to serve responsive pleadings. Wagstaffe Decl. ¶¶ 2, 5. Due to the early
8 stage of litigation, coordination will eliminate duplicative efforts and rulings.

9 *Fourth*, coordination will promote “the efficient utilization of judicial facilities and
10 manpower” and benefit “the calendar of the courts.” Cal. Civ. Proc. Code § 404.1. Petitioners’
11 claims are pending in San Mateo County Superior Court and Trinity County Superior Court.
12 Wagstaffe Decl. ¶ 2. Coordination will unburden the judicial system by avoiding adjudication of
13 six lawsuits involving common questions of fact and law in different counties. All actions seek
14 damages arising out of the same product against the same Defendants. Wagstaffe Decl. ¶2; Ex. A-E,
15 ¶¶ 125, 130-177. Coordination will eliminate the need to adjudicate six different times what is in
16 most material respects the same case.

17 *Fifth*, coordination will avoid “the disadvantages of duplicative and inconsistent rulings,
18 orders, or judgments.” Cal. Civ. Proc. Code § 404.1. Petitioners’ actions are complex and will
19 likely result in significant motions practice, including a demurrer that Defendants have indicated to
20 Petitioner Ashman they intend to file. Wagstaffe Decl. ¶ 7. Granting the Petition of Coordination
21 will promote uniform and consistent rulings on such motions. *See McGhan Medical Corp.*, 11 Cal.
22 App. 4th at 814 (granting petition for coordination in part because “a great volume of motion
23 practice will precede trial of most of these cases” and “rulings on these motions should be uniform,
24 if possible”).

25 *Sixth*, it is unlikely that denial of coordination would promote settlement. Cal. Civ. Proc.
26 Code § 404.1. The parties, at the Court’s urging, are required to create organized plans for
27 mediation or settlement. Coordination will foster settlement through ease of planning and
28 discussions.

1 **C. All Petitioners Consent to the Coordination of These Cases.**

2 Under Cal. Civ. Proc. Code § 404, a petition for coordination may be submitted to the
3 Chairperson of the Judicial Council by “all of the parties plaintiff or defendant.” Here, all of the
4 plaintiffs in each of the actions sought to be coordinated agree that coordination is appropriate and
5 jointly submit this petition.

6 **D. The Above-Captioned Cases Should be Coordinated in San Francisco Superior
7 Court.**

8 Petitioners request that this Court and the Chair of the Judicial Council assign these
9 coordinated proceedings to the County of San Francisco Superior Court Department for Complex
10 Civil Litigation.

11 *First*, San Francisco’s Complex Civil Litigation department has extensive experience with
12 technology-related litigation; a depth of experience in complex case management, electronic
13 discovery, and e-filings; and ample judicial resources. These resources will greatly assist and aid in
14 the efficient management of these complex actions.

15 *Second*, San Francisco is home to Mark Zuckerberg (a defendant in one of the above-
16 captioned actions), Meta and Instagram have large offices there, and the Bay area is home to the
17 majority of the other corporate witnesses and documents in these actions.

18 *Third*, San Francisco is centrally located in the State and thus most readily accessible to both
19 Defendants’ counsel (who have offices in San Francisco), the Plaintiff from Trinity County, and
20 other Plaintiffs who file tag-along actions elsewhere in the State. Given that this is a national
21 problem, in-state and out of state counsel will be able to avail themselves of San Francisco’s
22 convenient international airport and many business hotels. Coordination there will promote the goal
23 of judicial efficiency by being the most convenient, efficient, and central location for the parties and
24 their counsel, with a strong nexus to the common issues and facts at issue in these cases.

24 **IV. CONCLUSION**

25 For the foregoing reasons, Petitioners respectfully request that their Petition for
26 Coordination be granted.

1 Dated: September 15, 2022

Respectfully Submitted,



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4 **MOTLEY RICE LLC**

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25 **PRO HAC VICE APPLICATIONS TO
BE FILED*

26 *Additional Attorneys for Petitioners*

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