

EXHIBIT 78

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**IN RE: SOCIAL MEDIA ADOLESCENT
ADDICTION/PERSONAL INJURY
PRODUCTS LIABILITY LITIGATION**

THIS DOCUMENT RELATES TO:

ALL ACTIONS

MDL No. 3047

Case No. 4:22-03047-YGR

Judge: Hon. Yvonne Gonzalez Rogers

Magistrate Judge: Hon. Peter H. Kang

**REBUTTAL EXPERT REPORT OF DR.
NASIR MEMON**

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61. A layered strategy allows platforms to apply low-friction, low-cost methods to most users while escalating to more stringent checks only when needed, based on context or risk. This graduated model improves usability and resource efficiency while maintaining strong protections for vulnerable populations. It also supports long-term adaptability: as new threats, technologies, or compliance requirements emerge, new layers can be added or existing ones refined without redesigning the entire system. In this way, defense in depth is not only a principle of robust protection, but also one of operational flexibility and regulatory resilience.

62. Plaintiffs' experts claim that Meta's age verification practices are ineffective because of the presence of underage users on Meta's platforms.³⁹ This criticism is misguided: in the cybersecurity field, it is accepted that no system is foolproof. No system, however well-designed, operates without exceptions, and the existence of exceptions does not mean that the system is inherently inadequate or poorly conceived. (Schneier, 2000 ("Security does not have to be perfect, but the risks have to be manageable.")). One of Plaintiffs' experts, Dr. John Chandler, asserts that Meta's approach to excluding underage individuals, including looking at the individual's self-reported age, was "imperfect,"⁴⁰ which applies an impossible standard, rather than evaluating whether the system is designed with all component considerations in mind, is fit for purpose, and comports with industry practices.

63. Meta's multi-layered age verification processes, designed to enforce its platforms' age restrictions, are reasonable and met or exceeded prevailing industry practices throughout the relevant period. The first layer is age gating and age collection at

³⁹ See generally Estes; Gray; Expert Report of Minette Drumwright, Ph.D., Case No. 4:22-03047-YGR, Multi-District Litigation No. 3047, *In re: Social Media Adolescent Addiction* (N.D. Cal., May 16, 2025) [hereinafter "Drumwright"]; Expert Report of Dr. John Chandler, Ph.D., Case No. 4:22-03047-YGR, Multi-District Litigation No. 3047, *In re: Social Media Adolescent Addiction* (N.D. Cal., May 16, 2025) [hereinafter "Chandler"].

⁴⁰ Chandler ¶167.

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registration. The second layer is identifying potential underage users through a multi-channel detection framework including the following: (1) online reporting; (2) internal reviews; (3) user self-reporting; and (4) cross-platform checks. The third layer is the review and evaluation of potential underage users' accounts using automations and human reviewers. The fourth layer is implementing underage checkpoints and appeals to suspend accounts suspected of belonging to users under 13, notify such users, and allow users to appeal this decision by providing documentation that they are 13 or older.

C. Meta's Policies

64. Meta's Terms of Service and Instagram's Terms of Use prohibit individuals under the age of 13 from using either Facebook, or Instagram. (META3047MDL-091-00080707; META3047MDL-208-00003308). This age restriction has been in place on both platforms throughout the relevant period. (META3047MDL-037-00118789; META3047MDL-012-00000096; META3047MDL-190-00000001; META3047MDL-091-00080707; META3047MDL-208-00003308; META3047MDL-208-00003310; META3047MDL-146-00072800).⁴¹

D. Account Registration & Age Collection

65. Meta's age gating and age collection at registration aims to prevent children under 13 from creating accounts on Facebook or Instagram. Consistent with its "real name" policy, which has always required Facebook users to create an account reflecting their true identity, Facebook has enforced its age restriction using an age gate

⁴¹ Specifically, the 2013 Facebook Statement of Rights and Responsibilities requires users to make the following commitment: "You will not use Facebook if you are under 13." (META3047MDL-091-00080707). The 2013 Instagram Terms of Service likewise states that users must be 13 years or older to use the site. (META3047MDL-208-00003308). More recently, the Instagram Terms of Use require that users make the commitment that they must be at least 13 years old to be part of the Instagram community. (META3047MDL-146-00072800). Instagram's Help Center post for "Confirming your age on Instagram" also outlines that Meta "require[s] people to be at least 13 years old to sign up for Instagram." (META3047MDL-040-00000350). See also <https://www.facebook.com/terms/>.

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since at least 2012. (META3047MDL-037-00118789). While Instagram has been restricted to users over 13 throughout the relevant period (META3047MDL- 208-00003308), it started to age gate the service in December 2019, when it began collecting user age for the first time. (META3047MDL-012-00000001; META3047MDL- 022-00008803).

66. Since both platforms started age gating, all individuals who create an account on Facebook or Instagram are required to enter their date of birth as part of a multi-step registration flow. (META3047MDL-053-00012657; META3047MDL-190-00000001). The date-of-birth screens are presented neutrally and without a pre-populated date of birth that would meet the minimum age requirement.⁴² One of Plaintiffs' experts, Dr. Gray, claims that the "scrolling date picker" format of the neutral age gate constitutes a dark pattern because it does not contain "contextual warnings or validations."⁴³ This criticism overlooks that the absence of contextual warnings is core to the concept of a neutral age gate, contravening the intent of the design where individuals input a date of birth without any indication of the applicable minimum age threshold for account creation. (META3047MDL-053-00012657).

67. If an individual enters a date of birth reflecting an age under 13, Meta prevents the individual from creating an account. For individuals who attempt to enter an age between 5 and 12, after two consecutive attempts, the individual will be prevented from creating an account and locked out of the registration process for a period of 12 hours. (META3047MDL-053-00012657). Originally, this restriction was session-based only; in 2022, Meta improved the "cooldown" period to persist across mobile application restarts on the same device, making it more difficult for determined underage individuals who

⁴² Note that between 2017 and 2020, the age gate on Facebook displayed, as a default, a birth date reflecting an age of 25. Nonetheless, during this period, the age gate still did not indicate the minimum age required for registration. (META3047MDL-040-00335514; META3047MDL-047-00016158).

⁴³ Gray ¶88.

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sought to bypass the restriction by closing and reopening the mobile application. (META3047MDL-019-00129336). Gray also takes issue with the fact that Meta gives individuals a second chance to create an account if the individuals at first input a date of birth reflecting an age below 13.⁴⁴ Individuals who attempt to enter an age between 5 and 12 are prevented from creating an account and locked out of the registration process for 12 hours after two consecutive attempts. (META3047MDL-053-00012657). Meta's decision to allow individuals to make a second attempt when they enter a date of birth indicating an age under 13 is reasonable because individuals may input a date of birth in error in light of the design of the neutral age gate (discussed above), for example, by scrolling the "year" selector too quickly or by accidentally submitting the form before they were done selecting the correct date.

68. Critically, individuals who enter a date of birth indicating they are under the age of 13 receive a generic error message informing them that they cannot create an account, without specifying the age threshold that the individual failed to meet, thus avoiding coaching or circumvention. Gray notes that when an individual attempts to create an account with an age below the threshold, the interface presents a generic error message, then allows the individual to subsequently adjust their birthdate.⁴⁵ However, this explanation overlooks that the error message is generic, which prevents the individual from knowing which aspect of their registration caused the account-creation failure, ensuring that the individual is not encouraged to re-attempt with a different date of birth.

69. As discussed in Section V, Plaintiffs' experts criticize Meta for not requiring further age verification, such as an ID or credit card check, at account registration

⁴⁴ Gray ¶85.

⁴⁵ Gray ¶85.

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Certification:

The undersigned hereby certifies their understanding that they owe a primary and overriding duty of candor and professional integrity to help the Court on matters within their expertise and in all submissions to, or testimony before, the Court. The undersigned further certifies that their report and opinions are not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "N. Memon", is written over a light yellow rectangular background.

Dr. Nasir Memon, PhD.
July 9, 2025