

EXHIBIT A

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT**

STATE OF NEW MEXICO, EX REL.,
RAÚL TORREZ, ATTORNEY GENERAL,

Plaintiff,

v.

NO. D-101-CV-2023-02838

META PLATFORMS, INC.; INSTAGRAM, LLC;
META PAYMENTS, INC.; and META PLATFORMS
TECHNOLOGIES, LLC,

Defendants.

**DECLARATION OF BRENDAN AUSTIN IN SUPPORT OF PLAINTIFF'S
MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PARTIAL SUMMARY
JUDGMENT FOR DECEPTIVE PRACTICES REGARDING
AVAILABILITY TO CHILDREN UNDER 13 YEARS OLD**

I, Brendan Austin, under oath, hereby declare as follows:

I am Counsel for Plaintiff State of New Mexico. My business address is 401 9th Street NW,
Suite 630, Washington, DC 20004.

This declaration is based on my personal knowledge and review of the documents and
information discussed herein.

Meta Misrepresented That It Did Not Make Its Platforms Available To U13 Users

1. Since at least January 19, 2013, Instagram's terms of use states: "You must be at
least 13 years old." See true and correct copy of METANMAG-002-00000001 at 44, 53 attached
as Exhibit 1.

2. Since at least January 19, 2013, Instagram's privacy policy states: "Instagram does
not knowingly collect or solicit any information from anyone under the age of 13 or knowingly

allow such persons to register for the Service. The Service and its content are not directed at children under the age of 13.” *Id.* at 64.

3. From at least July 9, 2014 until April 2018, Facebook’s Terms of Service states: “You will not use Facebook if you are under 13.” *See* true and correct copy of <https://web.archive.org/web/20140709054009/https://www.facebook.com/terms> attached as Exhibit 2; *see also* true and correct copy of <https://web.archive.org/web/20180430151726/https://www.facebook.com/terms/> attached as Exhibit 3.

4. Since at least April 2018, Facebook’s Terms of Service states: “[Y]ou cannot use Facebook if: You are under 13 years old.” *See* true and correct copy of <https://web.archive.org/web/20180531065305/https://www.facebook.com/terms/> attached as Exhibit 4.

5. A March 17, 2021, Instagram blog post titled, “Continuing to Make Instagram Safer for the Youngest Members of Our Community” said: “We require everyone to be at least 13 to use Instagram and have asked new users to provide their age when they sign up for an account for some time. While many people are honest about their age, we know that young people can lie about their date of birth. We want to do more to stop this from happening, but verifying people’s age online is complex and something many in our industry are grappling with.” *See* true and correct copy of <https://about.instagram.com/blog/announcements/continuing-to-make-instagram-safer-for-the-youngest-members-of-our-community> attached as Exhibit 5.

6. On March 25, 2021, Mark Zuckerberg testified before the U.S. House of Representatives Subcommittee on Communications and Technology joint with the Subcommittee on Consumer Protection and Commerce: “our policies on the main apps that we offer generally

prohibit people under the age of 13 from using the services.” *See* true and correct copy of <https://www.congress.gov/117/meeting/house/111407/documents/HHRG-117-JE16-Transcript-20210325.pdf> attached as Exhibit 6.

7. A July 27, 2021, Meta blog post titled, “How Do We Know Someone Is Old Enough to Use Our Apps?” said: “Facebook and Instagram weren’t designed for people under the age of 13, so we’re creating new ways to stop those who are underage from signing up.” *See* true and correct copy of <https://about.fb.com/news/2021/07/age-verification/> attached as Exhibit 7. The blog post also said: “As per our terms, we require people to be at least 13 years old to sign up for Facebook or Instagram.” *Id.*

8. On December 8, 2021, Adam Mosseri submitted written testimony to U.S. Senate Subcommittee on Consumer Product Safety and Data Security: “As Head of Instagram, I am especially focused on the safety of the youngest people who use our services. This work includes keeping underage users off our platform” and “Instagram is built for people 13 and older. If a child is under the age of 13, they are not permitted on Instagram.” *See* true and correct copy of METANMAG-002-00002346 attached as Exhibit 8.

9. Since at least January 10, 2024, Instagram’s Help Center Website on Staying Safe, Tips For Parents titled, About Instagram Teen Privacy and Safety Settings: “We require people to be at least 13 years old to sign up for Instagram.” *See* true and correct copy <https://help.instagram.com/3237561506542117> attached as Exhibit 9.

10. Meta’s current “A Parent Guide to Instagram” said: “We require people to be at least 13 years old to sign up for Instagram.” *See* true and correct copy NCOSE 30(b)(6) Dep. Ex. 10 attached as Exhibit 10.

11. Each of these statements were available nationally and in New Mexico online via Meta's website, through Congressionally broadcast hearings, and on Congress's website.

12. Meta did not disclose publicly its knowledge, summarized below, that millions of children under 13 used Facebook and Instagram, that Meta did not engage in meaningful enforcement or verification to ensure that children under 13 did not use its platforms.

Meta Had Knowledge Of And Turned a Blind Eye To U13 Users On Its Platforms

13. As early as May 2011, external researchers informed Facebook that approximately 7.5 million U.S. users were U13, and about 5 million of those were under the age of 10. *See* true and correct copy of <https://abcnews.go.com/Technology/underage-facebook-members-75-million-users-age-13/story?id=13565619> attached as Exhibit 11.

14. An April 30, 2012, PowerPoint titled "Project Kid" said: "allowing <13s to join Facebook without lying allows us to give them the appropriate protections" and admitted that "[t]here is no age verification for anyone who claims to be >13." *See* true and correct copy of METANMAG-002-02352081 at ps. 6, 15 attached as Exhibit 12.

15. An internal Facebook June 2012 presentation admitted: "Evidence indicates that millions of children under 12 on Facebook[.]" *See* true and correct copy of METANMAG-011-01017270 at p. 4 attached as Exhibit 13.

16. In 2012, it was "common knowledge [at Facebook] that there were young kids on Instagram" and it was a "big reason" Facebook decided to acquire Instagram because Facebook wanted young kids on their social media apps. *See* true and correct copy of Bejar Dep. Vol 1 184:23-185:22 attached as Exhibit 14.

17. An October 25, 2016, presentation states: "'Nielsen Families' show the pattern of age misrepresentation (circa 2013)" with a graph depicting a cluster of teens and U13 users

misrepresenting their age. *See* true and correct copy of METANMAG-011-00991007 at 1045 attached as Exhibit 15.

18. A 2018 Youth Team Review noted: “Looking at people we predict to be 13 and 14 today, we can estimate that there were 4M people under 13 in 2015 on IG,” which “represents around 30% of all 10-12 years old in the US.” *See* true and correct copy of METANMAG-002-00610846 at 0850 attached as Exhibit 16.

19. On September 10, 2018, a Meta employee conceded in an internal email discussing the Community Standards Enforcement Report for Facebook and Instagram: “Until we have really strong mechanisms for preventing inappropriate adult/minor contact, I think we risk generating more negative press than positive – especially when we do very little to keep U13s off our platform.” *See* true and correct copy of METANMAG-111-00000010 at 0011 attached as Exhibit 17.

20. Prior to and at least as early as 2019, Instagram’s approach to U13 users was “Don’t ask Don’t tell” meaning that Instagram knew there were “kids under 13 but you do not really talk about it and you don’t ask about it. . . . if you didn’t know somebody was under 13, then you didn’t have to do anything about it.” *See* true and correct copy of Bejar Dep. 186:21-188:8 attached as Exhibit 14.

21. In 2019, Meta was not affirmatively searching accounts on Facebook or Instagram to identify U13 users. Instead, Meta relied on user reporting and fan-outs from those reports. *See* true and correct copy of Mosseri Dep. (July 25, 2025) at 16:6-15 attached as Exhibit 18.

22. On January 24, 2019, a Meta employee acknowledged Instagram’s “lack of proactive action on detecting under 13 accounts undermines our credibility generally but it’s compounded by both our younger demographic as well as the fact that because we don’t collect

age, using age-gating as a solution to ensure content that's especially inappropriate for younger users isn't something we can lean into." *See* true and correct copy of MT-IG-AG-NM-000049647 at 9649 attached as Exhibit 19.

23. Instagram did not require new users to provide their age until December 4, 2019. *See* true and correct copy of <https://about.instagram.com/blog/announcements/making-instagram-safer-for-the-youngest-members-of-our-community> attached as Exhibit 20.

24. An internal document dated March 2, 2020, titled "Under-13Age Gating + Enforcement," asks whether Meta "[s]hould [] change the current default age on the birthday screen from 25 years old to an age below the minimum required age (i.e. 0 or 1)?" *See* true and correct copy of METANMAG-082-00000404 at 0404 attached as Exhibit 21. The document states: "We ask people to state their age at registration and block attempts to create accounts by people who say they're too young. (But the default age is 25 and many people accept that.)" *Id.* at 0405. The document also states: "[W]e've been testing improvements to collecting age at registration that would collect age in a neutral way (i.e., one that doesn't have a 'passing' age as the default and that doesn't clearly signal what the 'right answer' to the age question is) . . . we found that a neutral age gate had a negative impact of ~12.5 MAP [Monthly Active People]/year." *Id.*

25. In 2020, Meta was not doing age prediction to identify U13 users. *See* Exhibit 18 at 57:12-22.

26. A 2020 survey conducted by the nonprofit Thorn found that 40 percent of children under 13 reported using Instagram and 45 percent used Facebook. National Center of Sexual Exploitation ("NCOSE") 30(b)(6) Deposition (May 7, 2025) ("NCOSE DEP") 89:3-90:5 attached as Exhibit 22.

27. In a May 21, 2021 internal discussion, a Meta employee said: “seeing thorn’s [data] I am concerned that those most victimized are of an age that shouldn’t even be on ig.” *See* true and correct copy of METANMAG-002-00477677 attached as Exhibit 23. The employee’s statement was in response to a Thorn Report from May 2021 finding that the “highest number of survey participants reporting a potentially harmful online experience included . . . Instagram (26%) . . . and Messenger (18%),” platforms with the most “online sexual interaction” were “Instagram (16%), Messenger (11%), and Facebook (10%),” and that “45 percent of minors 9-12 are using Facebook; 40 percent are using IG.” *See* true and correct copy of MT-IG-AG-NM-000214320 at 4321 attached as Exhibit 24.

28. In a September 8, 2021, internal discussion, a Meta employee said: “About 1/3 of kids – particularly 11-12 – are already on Instagram[.]” *See* true and correct copy of METANMAG-003-00866610 attached as Exhibit 25.

29. An internal Meta study conducted in approximately September 2021, found that “majority of 12 yr olds and about half [of 11 year olds] were already on IG” and noted that “we couldn’t ask if they had their own account.” *See* true and correct copy of METANMAG-005-00170332 at 0332 attached as Exhibit 26.

30. A 2021 survey conducted by Common Sense found that 38% of U.S. children aged 8 to 12 had used social media, and that 18% of them used it every day. *See* true and correct copy of https://www.common sense media.org/sites/default/files/research/report/8-18-census-integrated-report-final-web_0.pdf at p. 33 attached as Exhibit 27.

31. In a February 15, 2022, a Meta employee internally acknowledged: “One of the complexities is that we’re not able to identify how many U13 users are on our platform and thus

being classified as teens.” *See* true and correct copy of METANMAG-003-00002507 attached as Exhibit 28.

32. On July 6, 2023, Meta employees discussed research related to users’ age and age verification. *See* true and correct copy of METANMAG-002-00518204 attached as Exhibit 29. One employee noted that “we explicitly did not ask about under-13 misrepresentation, per guidance by the Litigation team.” *Id.* The Meta employee further noted, however, that “in this study a couple teens said they had IG accounts before age 13.” *Id.*

33. A 2024 report released by Thorn titled “Youth Perspective on Online Safety, 2023” found that 59% of 9–12-year-olds reported using Facebook and 50% reported using Instagram. *See* true and correct copy of https://info.thorn.org/hubfs/Research/Thorn_23_YouthMonitoring_Report.pdf attached as Exhibit 30.

34. On February 8, 2024, the principal of Vado Elementary School in Southern New Mexico wrote to Adam Mosseri: “I am writing to you with grave concern . . . regarding the pervasive issue of underage students accessing Instagram Despite numerous attempts to address this problem, it continues to persist, largely due to insufficient action from Instagram’s parent company, Meta.” *See* true and correct copy of METANMAG-003-00807971 attached as Exhibit 31.

35. In meetings on April 22, 2020 and June 10, 2021 between National Center on Sexual Exploitation (“NCOSE”) and Meta, NCOSE informed Meta it and its partner organizations observed many U13 users on Instagram. *See* Exhibit 22 (NCOSE Dep.) 192:21-195:25; 209:13-211:6. During these meetings, Meta employees acknowledged that they knew U13 users lied about their age and were on Instagram. *Id.*

36. Kids under 13 “have always lied about their age to try to get on apps, like Instagram.” *See* Exhibit 18 Adam Mosseri Deposition (July 25, 2025) 11:15-22. Meta “knew this in 2018 and today in 2025.” *Id.*

Meta Discouraged Reporting U13 Users And Deprioritized U13 Reports

37. Because Meta informed NCOSE that Meta relied on user reports to identify U13s on its platforms, an NCOSE employee attempted to report an U13 user and determined the reporting process was incredibly complicated, requiring her to provide external documents to verify her knowledge the child was U13. *See* Exhibit 22 (NCOSE Dep.) at 211:11-212:11. Ultimately, the NCOSE employee was unable to report the U13 user from Instagram. *Id.*

38. Reporting a U13 user required the reporter to exit Meta’s application and go to an internet form. *See* true and correct copy of Jayakumar Dep. Vol. 1 (Jan. 30, 2025) 91:24-92:3; 96:9-14 attached as Exhibit 32. Once at the form, it took “over 7 screens for users to report U-13 users on IG.” *Id.*; *see also* true and correct copy of METANMAG-002-01054251 attached as Exhibit 33. Meta employees knew that an in-app reporting feature would be a much faster and more seamless way to report U13 users. *See* Exhibit 33 (METANMAG-002-01054251). However, employees were concerned that it would add to the already-existing backlog of 2.5 million age-related reports. *Id.*; *see also* true and correct copy of MT-IG-AG-NM-000210561 attached as Exhibit 34.

39. The State’s expert, Dr. Colin Gray, observed that Instagram’s underage reporting form “uses obstruction, interface interference, and forced action to discourage reporting these users.” Gray Report (July 11, 2025) ¶ 89 attached as Exhibit 35. “For instance, the form requests the username, full name, and birthdate of the individual being reported—items unlikely to be known by someone submitting the form. . . . [T]he form cannot be submitted without including a full date of birth for the underage user and, if a user attempts to submit the form more than twice

without the required information, Instagram introduces an additional form of obstruction: an error message stating that “you’re going too fast” and that “restrictions might be made on your account” if they continue using the feature. This message appears to be a generalized rate-limiting response, but in this context, it functions as a deterrent to form submission, implicitly punishing users for repeated attempts to report an underage account.” *Id.*

40. A document titled “Child Safety State of Play Interim update – September 2020” says: “We [Meta] have de-prioritized enforcing against u13s on our platform. We are neither building a proactive u13 classifier nor prioritizing enforcing against reported u13s.” *See* true and correct copy of METANMAG-002-01993573 at 3579 attached as Exhibit 36. It further admits: “there’s also a current u13 backlog (~700k job backlog) . . . [t]his backlog is currently not resourced.” *Id.*

Meta Failed To Implement Age Verification To Identify And Remove U13 Users

41. Instagram had the “ability to build effective tools to try to prohibit kids younger than 13 from being on Instagram” *See* Exhibit 14 at. 190:21-24, 193:16-194:3.

42. A June 2019 presentation analyzing Instagram’s 2019 Policy communications guide states: “Biggest weakness of [U13] messaging is that current approach to age verification feels largely reactive, placing reliance on honesty of users.” *See* true and correct copy of METANMAG-021-00546991 at 7017 attached as Exhibit 37.

43. In 2019, the only steps Meta took to confirm users’ age was 1) content moderators would “check age when anything gets reported” and 2) allowing anyone to report “someone they think are under 13.” *Id.*

44. In February 2020, Meta Policy recommended implementing “proactive enforcement of under-13s who lie about their age to create [Facebook/Instagram] accounts[.]” *See*

true and correct copy of METANMAG-111-00000024 attached as Exhibit 38. In response to the recommendation, a Meta executive said: “We will be forced by regulators, advertisers and wider societal expectations to do more on this so it is essential we get moving – beyond all else, not acting to enforce our own rules as fully we can is an unsustainable/unjustifiable position to be in. . . . I find it difficult to imagine that there are many other tasks as important/pressing as this one.”

Id. Explaining this recommendation, a Policy Vice President said: “The reason we’re raising this for a decision is that we’re seeing more aggressive policy proposals to regulate this space.” *See* true and correct copy of METANMAG-111-00000005 attached as Exhibit 39.

45. A July 1, 2020, document titled “Child Safety – State of Play (7/20),” which analyzed Meta’s child safety policies across all of its platforms, including Facebook and Instagram, states: “in March it was decided that we would not build a classifier to detect minors under 13 years old.” *See* true and correct copy of METANMAG-002-00219693 at 9701 attached as Exhibit 40.

46. A document titled “Child Safety State of Play Interim update – September 2020, says regarding Facebook and Instagram: “Age verification pressures: We will likely continue to face external pressure to verify age. . . . The challenge is getting our age models globally operational and justifying such an approach to product growth teams.” *See* Exhibit 41 (METANMAG-002-01993573) at 3578-79. It further says: “Age models do not work well on IG because IG only started to collect age data for new sign ups in December 2019.” *Id.* It also states: “We have de-prioritized enforcing against u13s on our platform. We are neither building a proactive u13 classifier nor prioritizing enforcing against reported u13s.” *Id.*

47. A presentation titled “Messenger Well Being All Hands” dated March 2021, states: “we must build child safety protections for minors and drive down child exploitation prevalence

on our platform. Our ability to do this is largely hamstrung by our inability to verify age and predict age globally because most, if not all, of our product interventions and child safety mitigations depend on our ability to detect minors (and age-lying adults) accurately.” *See* true and correct copy of METANMAG-002-00698654 at p. 147 attached as Exhibit 42.

48. Meta promotes that it has “developed more than 30 tools and features to help support teens and their parents.” *See* true and correct copy of <https://about.fb.com/news/2024/01/introducing-stricter-message-settings-for-teens-on-instagram-and-facebook/> attached as Exhibit 43.

49. A document titled “Age Verification and Safety Defaults (Concepts only) – US and IN Rolling Research findings (May 2021)” states: “Instagram is known as a social media app with no age restrictions.” *See* true and correct copy of METANMAG-002-00672807 at 2807 attached as Exhibit 44.

50. On June 14, 2021, Mosseri and Zuckerberg discussed “age modeling for under 13” on Meta’s platforms. *See* true and correct copy of METANMAG-111-00000047 attached as Exhibit 45. Mosseri told Zuckerberg: “I vaguely remember you having a strong point of view on whether or not we should do this” and “Stan, Pavni, and I are aligned that we need to do this[.]” *Id.*

51. In November 2021, a Meta vice president sent an email regarding 2022 Budget Planning: “I have a time critical need to find \$14.5m \$ in Adam’s budget or beyond. This is u13 and u18 classifier work and it cannot wait,” reflecting that Meta still did not have a means to proactively identify U13 users in late 2021. *See* true and correct copy of METANMAG-002-00478590 at 8590 attached as Exhibit 46.

52. On June 23, 2022, Meta announced that it was “introducing new ways to verify age on Instagram,” including by providing an ID or a video selfie, which is submitted to Yoti, a company that specializes in online age verification using facial features. *See* true and correct copy of <https://about.instagram.com/blog/announcements/new-ways-to-verify-age-on-instagram> attached as Exhibit 47. Meta acknowledges that Yoti trained its dataset using children under the age of 13. *Id.* While Meta could have used these methods to verify age for U13 users, Meta only required an ID or the video selfie if “someone attempts to edit their date of birth on Instagram from under the age of 18 to 18 or over.” *Id.*

53. A document titled “xMY Canonical Youth Defaults [A/C Priv]” with the last modified date of January 15, 2024, says: “Requiring Age Verification for new <18 users . . . would have a cost on the order of millions to tens of millions of [Monthly Active Users] for [Facebook] and [Instagram].” *See* true and correct copy of METANMAG-002-02102278 at 2282 attached as Exhibit 48.

Meta Targeted and Profited From U13 Users

54. A November 15, 2016, presentation titled “The Teens Team 2017” states: “U13: Significant tablet usage starts at 3-4,” “U13: Smartphones dominate from age 10,” and “U13: Social identity is an unmet need ages 5-11.” *See* true and correct copy of METANMAG-011-00363223 at ps. 12-15 attached as Exhibit 49. Goals identified in the presentation included “increase US teen time spent” and “Grow MAP, DAP, and time spent among U13 kids.” *Id.* at ps. 22-23. A slide titled “Brainstorm -> Fix Facebook” included ideas for U13s including “[p]ost without allowing comments” and “[n]ew, creative post formats (quizzes, lip syncs etc).” *Id.* at p. 38. A slide titled “Brainstorm -> U13” included ideas such as “[s]anta messaging bot,” “[t]amagotchi pet,” and “[d]on’t need to sign in to see content.” *Id.* at p. 40.

55. On May 11, 2018, a product design manager, wrote in an email with the subject: “Winning Teens = Winning Generations (& Rob’s Weekly Youth Update – May 11)”: “How can we build products that make it so that when you start Middle School, Facebook is the best product to use and the way you connect with your peers?” *See* true and correct copy of MT-IG-AG-NM-000036412 at 6429-30 attached as Exhibit 50. The manager wrote on the same email chain, on August 24, 2018: “the young ones are the best ones . . . you want to bring people to your service young and early.” *Id.* at 6415.

56. On September 6, 2018, a Meta employee posted a presentation titled “Market Landscape Review: Teen Opportunity Cost and Lifetime Value” which says: “The lifetime value of a 13 y/o teen is roughly \$270 per teen.” *See* true and correct copy of METANMAG-002-00225608 at 5608 attached as Exhibit 51. This represents the highest lifetime value of any age cohort. *Id.* at 5620.

57. The State’s expert Dr. Zachary Ward conducted a study using available data that estimates Meta’s 2022 national annual advertising revenue on Facebook and Instagram from 0-17 year olds was \$5.3 billion and \$0.9 billion for 0-12 year olds. *See* true and correct copy of Ward Report (July 11, 2025) ¶ 43 attached as Exhibit 52. For users in New Mexico, the 2022 annual revenue estimates are \$34 million for ages 0-17 and nearly \$6 million for ages 0-12. *Id.* ¶ 44.

58. Meta requires users to agree to Facebook’s Terms of Service and Instagram’s Terms of Use in order to use those platforms. *See* true and correct copy of https://mbasic.facebook.com/legal/terms/plain_text_terms/ attached as Exhibit 53 *see* true and correct copy of <https://help.instagram.com/termsfuse> attached as Exhibit 54

59. The Terms of Service for Facebook states: “How our services are funded . . . we use your personal data...to show you personalized ads.” *See* Exhibit 53.

60. The Terms of Use for Instagram states: “How Our Service Is funded . . . We use your personal data . . . to show you ads that are more relevant to you.” *See* Exhibit 54.

61. Meta admitted in a blog post, dated September 17, 2024: “We know parents want to feel confident that their teens can use social media to connect with their friends and explore their interests, without having to worry about unsafe or inappropriate experiences.” *See* true and correct copy of <https://about.fb.com/news/2024/09/instagram-teen-accounts/> attached as Exhibit 55.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed this 5th day of November 2025.

/s/Brendan Austin
Brendan Austin