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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
DEPT. NO.: XVI

**[HEARING REQUESTED ON
SHORTENED TIME]**

**PLAINTIFF STATE OF NEVADA'S
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION ON
ORDER SHORTENING TIME
(REDACTED)**

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1 Plaintiff State of Nevada (the “State”), by and through its attorneys of record, the Office
2 of the Attorney General and the law firms of Kemp Jones, LLP, Nachawati Law Group, and WH
3 Law, hereby respectfully move this Honorable Court on shortened time for a temporary
4 restraining order and preliminary injunction under NRCP 65 and NRS 33.010, *et seq.* granting
5 the following relief against Defendant Meta Platforms, Inc., f/k/a Facebook, Inc. (“Meta”):

- 6 1. Entering a temporary restraining order, going into effect within seven (7) days of
7 the Court’s order, enjoining and restraining Defendant Meta from using End-to-
8 End Encryption in its Messenger application and services (“Messenger”) as
9 Messenger relates to other services Meta offers when these services are used by
10 Young Users (defined herein to refer to all users of Messenger located within the
11 State of Nevada who Meta either knows or has reason to know are under the age
12 of 18);
- 13 2. Entering a preliminary injunction providing for the same relief; and
- 14 3. Granting the State such other and further relief as the Court deems just and proper.

15 This Motion is made and based upon the Complaint on file herein, the following
16 Memorandum of Points and Authorities, the Declarations of Michael J. Gayan, Esq., Christopher
17 Defonseka, and Anthony Gonzales submitted herewith, any other exhibits attached hereto, and
18 any oral argument permitted by the Court.

19 DATED this 20th day of February, 2024.

20 STATE OF NEVADA, OFFICE OF THE
21 ATTORNEY GENERAL

KEMP JONES, LLP

22 /s/ Mark J. Krueger
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1 **Declaration of Michael J. Gayan in Support of Plaintiff’s Motion and Request for Order**
2 **Shortening Time Pursuant to EDCR 2.26**

3 I, Michael J. Gayan, Esq., state and affirm as follows:

4 1. I am a partner in the firm of Kemp Jones, LLP and have personal knowledge of
5 the facts stated herein except those matters stated on information and belief, and as to those
6 matters I believe them to be true.

7 2. I am counsel of record for the State of Nevada in the above-captioned action, along
8 with the other firms and counsel listed in the caption of this Motion.

9 3. I submit this Declaration in support of Plaintiff State of Nevada’s Motion for
10 Temporary Restraining Order and Preliminary Injunction on Order Shortening Time.

11 4. On January 30, 2024, after investigating Defendant Meta, Attorney General Aaron
12 D. Ford, Esq., directed me and others to file this action on behalf of the State of Nevada relating
13 to Meta’s Messenger social media platform, specifically related to Nevada minors who use the
14 Messenger platform. *See, generally*, Compl.; *id* at ¶¶ 202-212.

15 5. On February 20, 2024, the State served the Summons and Complaint on Defendant
16 Meta—which has an Active status as a foreign corporation registered to do business in the State
17 of Nevada—via its Registered Agent on file with the Nevada Secretary of State (Corporation
18 Service Company, 112 North Curry Street, Carson City, Nevada 89703). *See* 2/20/24 Affidavit
19 of Service (Doc. No. 7).

20 6. On February 20, 2024, promptly after completing service of process on Defendant
21 Meta’s Registered Agent, I caused the Summons and Complaint to be emailed to Meta’s
22 following counsel of record in similar social media platform litigation against Meta pending in
23 other jurisdictions: (a) *In re: Social Media Adolescent Addition/Personal Injury Prod. Liab. Litig.*,
24 MDL No. 3047, U.S. District Court, Northern District of California; (b) *State of California v.*
25 *Meta Platforms, Inc., et al.*, Case No. 4:23-cv-05448-YRG, U.S. District Court, Northern District
26 of California; (c) *District of Columbia v. Meta Platforms, Inc., et al.*, Case No. 2023-CAB-
27 006550, Superior Court of the District of Columbia; (d) *Commonwealth of Massachusetts v. Meta*

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1 *Platforms, Inc., et al.*, Case No. 2384CV02397-BLS1, Superior Court, Commonwealth of
2 Massachusetts; (e) *State of New Hampshire v. Meta Platforms, Inc., et al.*, Case No. 217-2023-
3 CV-00594, Superior Court, State of New Hampshire; (f) *State of Tennessee v. Meta Platforms,*
4 *Inc., et al.*, Case No. 23-1364-IV, Chancery Court of Davidson County (20th District), State of
5 Tennessee; (g) *Utah Division of Consumer Protection v. Meta Platforms, Inc., et al.*, Case No.
6 230908060, Third Judicial District Court, Salt Lake County, State of Utah:

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13 7. In recent days and weeks, I helped the State to explore and understand how
14 individuals suspected and/or convicted of committing crimes use Defendant Meta’s Messenger
15 platform to find and communicate with Nevada minors in order to attempt and/or commit various
16 crimes against those minors.

17 8. As alleged in the Complaint, Defendant Meta knows or has reason to know that
18 many Nevada minors use Messenger, which is a standalone application and the integrated direct-
19 messaging tool in Meta’s Facebook and Instagram social media platforms. *See* Compl. at ¶¶ 56-
20 67.

21 9. Based on the Declarations of Christopher Defonseka and Anthony Gonzales,
22 attached as **Exhibit 1** and **Exhibit 2**, respectively, Messenger’s end-to-end encryption feature
23 (“E2EE”) makes Messenger a preferred method for individuals engaging or attempting to engage
24 in criminal activity targeting Nevada children due to that feature shielding the contents of its
25 users’ messages from Defendant Meta, the State’s law enforcement professionals, and anyone
26 else. *See* Ex. 2 (Gonzales Decl.) at ¶¶ 10; 27-29.

1 10. In addition, Messenger’s integration with Defendant Meta’s ubiquitous Facebook
2 and Instagram social media platforms gives potential criminals instant access to many Nevada
3 minors who routinely use these popular platforms. *See* Ex. 2 (Gonzales Decl.) at ¶ 29.

4 11. According to the Declaration of Anthony Gonzales, within the past 12 months,
5 **more than 700 CyberTips involving Defendant Meta’s Facebook and Instagram platforms**
6 **(which use Messenger for direct-messaging)** were reported to the Southern Nevada Internet
7 Crimes Against Children (“ICAC”) Taskforce. *See* Ex. 2 (Gonzales Decl.) at ¶ 30.

8 12. According to the Declarations of Chris Defonseka and Anthony Gonzales,
9 Defendant Meta’s use of E2EE on Messenger complicates and compromises the effectiveness
10 State law enforcement officials’ efforts to protect Nevada children. *See* Ex. 1 (Defonseka Decl.)
11 at ¶¶ 7-11; Ex. 2 (Gonzales Decl.) at ¶¶ 13-29.

12 13. In December 2023, Defendant Meta made E2EE the default setting in Messenger,
13 which further increased the State’s interest in—and the urgency of—challenging and ending
14 Meta’s use of E2EE on Nevada minors’ Messenger accounts.

15 14. Based on the foregoing facts, **the State’s strong interest in immediately**
16 **protecting Nevada children from any further criminal activities on Defendant Meta’s**
17 **Messenger platform**—in its standalone form and its integrated form on Meta’s Facebook and
18 Instagram platforms—**provides good cause for the Court to hear this Motion as soon as**
19 **possible.** I understand that the Court may be available to hear this Motion **in the afternoon on**
20 **Thursday, February 22, 2024.** If so, due to the extreme urgency of this matter affecting the
21 safety and well-being of the many Nevada children who use Messenger, the State respectfully
22 requests the Court enter an Order Shortening Time setting this Motion at that time.

23 15. The State also respectfully requests the Court set this matter for hearing on
24 **Thursday, February 22, 2024, because the Declarants, Mr. Defonseka and Mr. Gonzales,**
25 **are available to attend the hearing** and answer any questions the Court may have for them.
26 Declarants are not both available on Friday, February 23, 2024. Further, the key members of the
27 Attorney General’s office will also be available to attend at this time.

28

ORDER SHORTENING TIME

The Court having reviewed the Application for Order Shortening Time, and good cause appearing, IT IS HEREBY ORDERED that the foregoing **PLAINTIFF STATE OF NEVADA’S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION ON ORDER SHORTENING TIME** shall be heard on the 22nd day of February, 2024, at the hour of 1:30 p.m. at the Courtroom of the above-entitled Court, in Department XVI. *

Any **Opposition** to the Motion must be filed on or before February 21, 2024 at 5:00 p.m.

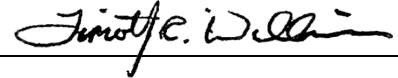
~~Any **Reply** in support of the Motion must be filed on or before _____~~

* Counsel may appear in person or via Zoom.

Department 16 Zoom Link:
<https://clarkcountycourts-us.zoom.us/j/82617258>

Meeting ID: 826 1725 8054

Dated this 20th day of February, 2024



SE

**9AF 13A 3986 A145
Timothy C. Williams
District Court Judge**

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 With this Motion, the State seeks to enjoin Meta from using end-to-end encryption (also
5 called “E2EE”) on Young Users’ Messenger communications within the State of Nevada.¹ This
6 conduct—which renders it impossible for anyone other than a private message’s sender and
7 recipient to know what information the message contains—serves as an essential tool of child
8 predators and drastically impedes law enforcement efforts to protect children from heinous online
9 crimes, including human trafficking, predation, and other forms of dangerous exploitation. Under
10 such circumstances, the Nevada Supreme Court makes clear that to obtain the injunctive relief
11 sought by this Motion, the State need only show “**a reasonable likelihood that the statute was**
12 **violated** and that the statute specifically allows injunctive relief.” *State ex rel. Off. of Att’y Gen.,*
13 *Bureau of Consumer Prot. v. NOS Commc’ns, Inc.*, 120 Nev. 65, 69, 84 P.3d 1052, 1055 (2004)
14 (emphasis added). The State’s Complaint is replete with indisputable factual allegations detailing
15 this harm and explaining—with specificity—how Meta’s conduct in this matter violates the
16 Nevada Unfair and Deceptive Trade Practices Act, N.R.S. §§ 598.0903 through 598.0999
17 (“NDTPA”). And, because the NDTPA expressly authorizes the Attorney General to seek, *inter*
18 *alia*, injunctive relief, the State’s Motion should be granted.

19 Meta (formerly Facebook, Inc.) is the parent company of some of the world’s largest social
20 media platforms, including its Messenger platform, an instant messaging application (“app”) that
21 enables users to send text, photos, videos, and other media within and outside of Meta’s equally
22 ubiquitous Facebook and Instagram apps. Worldwide, Messenger users number 1.036 billion.²

23 While direct messaging platforms like Messenger fulfill a valuable purpose—allowing
24 individuals to communicate conveniently, instantly, and privately—those platforms also can pose

25 ¹ As noted above, the State defines Young Users for purposes of this Motion as all users of
26 Messenger located within the State of Nevada who Meta either knows or has reason to know are
under the age of 18.

27 ² See Compl. at ¶ 2 (citing <https://datareportal.com/essential-facebook-messenger-stats> (last
28 visited Jan. 27, 2024)).

1 significant dangers. This is particularly true when the users are minors (“Young Users” as defined
2 above) who rely on social media platforms to stay in touch with their friends and to meet new
3 people. The public nature of platforms like Facebook and Instagram—coupled with the huge
4 population of Young Users on each platform—has made them a haven for child predators
5 engaging in grooming, sextortion, child sexual abuse materials, sex trafficking, and a host of other
6 crimes against children in Nevada and elsewhere.

7 While a child predator may first make contact with the target victim in a public manner,
8 for example by posting on the victim’s timeline or by sending a friend request, the bad actor will
9 quickly move the interactions outside of public view. [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 Messenger is particularly attractive to child predators due to an intentional design choice
14 by Meta. Specifically, Meta uses E2EE on all messages and calls sent or received via Messenger.
15 Since 2016, Meta has allowed users the option of employing E2EE for any private messages they
16 send via Messenger. Compl. at ¶ 202. And, as of December 2023, Meta reconfigured Messenger
17 to make E2EE—child predators’ main preferred feature—the default for all communications. *Id.*

18 With end-to-end encryption, the message (including its substance) is encrypted on the
19 sender’s system or device, and only the intended recipient’s device can decrypt it. This means
20 that as it travels to its destination—from sender to recipient—the message cannot be read or
21 tampered with by hackers, but it also means that the actual service provider (here, Meta) also
22 cannot ever view its contents, even for purposes of identifying and preventing child endangerment
23 or for providing the messages to law enforcement following valid legal process (*e.g.*, search
24 warrant).

25 Once more, [REDACTED]
26 [REDACTED]
27 [REDACTED]
28

1 [REDACTED]

2 [REDACTED]

3 [REDACTED] borne out by the experiences of the State’s law enforcement

4 officers tasked with protecting Nevada children and prosecuting child predators. As explained

5 more fully in the attached Declarations of Mr. Defonseka and Mr. Gonzales—two veteran State

6 law enforcement professionals with extensive experience with criminal investigations involving

7 online crimes against children—Meta’s end-to-end-encryption stymies efforts by Nevada law

8 enforcement, causing needless delay and even risking the spoliation of critical pieces of necessary

9 evidence in criminal prosecutions.

10 Because Meta’s conduct relative to Messenger and end-to-end encryption violates the

11 NDTPA, at least with respect to the dangers caused to Nevada children, and because the Attorney

12 General is expressly authorized to seek an injunction to remedy NDTPA violations, the Court

13 should grant this Motion.

14 **II.**

15 **RELEVANT FACTS**

16 **A. Messenger and End-to-End Encryption**

17 Messenger is an instant messaging platform—consisting of a free-standing app and a free-

18 standing website—developed by Meta. Compl. at ¶ 38. If users want to communicate privately

19 on Facebook (and in many instances, Instagram), they must use Messenger to send messages or

20 other media like photos, videos, stickers, audio, and files. *Id.* at ¶ 37. Messenger also allows for

21 video and voice calls. *Id.*

22 As set forth more fully in the Complaint and described above, Meta has allowed end-to-

23 end encryption in Messenger since 2016, but announced that, as of December 2023, it would take

24 the extra step of reconfiguring its system to make E2EE the default on all messages. *Id.* at ¶ 202.

25 As Meta explains, “[t]he extra layer of security provided by end-to-end encryption means that the

26 content of your messages and calls with friends and family are protected from the moment they

27 leave your device to the moment they reach the receiver’s device. This means that nobody,

28

1 including Meta, can see what’s sent or said, unless you choose to report a message to us.” *Id.* at ¶
2 203.

3 **B. Encryption on Messenger Enables Predators to Stalk Young Users with Impunity**

4 With regard to Young Users, E2EE is a confounding safety threat. Among other
5 stakeholders, the National Center of Sexual Exploitation has blasted Meta’s decision to use E2EE
6 on Messenger, stating that “[b]y implementing end-to-end encryption, Meta has guaranteed that
7 child sexual abuse cannot be investigated on its platforms” and “has done the exact opposite of
8 what it should do to combat child sexual exploitation on its platforms. Meta has effectively thrown
9 up its hands, saying that child sexual abuse is not its problem,” said Dawn Hawkins, CEO,
10 National Center on Sexual Exploitation. *Id.* at ¶ 204.

11 [REDACTED] end-to-end encryption significantly
12 impairs any efforts to keep Young Users—including those in Nevada—safe on Messenger, for a
13 host of reasons. Most obviously, [REDACTED]

14 [REDACTED]

15 .³ Instead, Meta [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25
26 ³ As just one example, federal law requires that entities like Meta alert the “CyberTipline” of the
27 National Center for Missing and Exploited Children “as soon as reasonably possible” of any
28 actual knowledge of CSAM being exchanged on the entity’s platform. *See* 18 U.S.C. § 2258A.
This applies with equal force to “apparent violations” and “imminent violations.” *Id.*

1 Meta *also* knows that its [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]⁴

7 Unsurprisingly, Meta’s irresponsible—and intentional—decision to use E2EE for
8 Messenger (and to now make it the default setting) has impacted Nevada children, and has harmed
9 and continues to harm Nevada law enforcement efforts to protect the State’s youngest and most
10 vulnerable citizens. As set forth in the Declaration Anthony Gonzales, the use of end-to-end
11 encryption in Messenger makes it impossible to obtain the content of a suspect’s (or defendant’s)
12 messages via search warrant served on Meta. *See* Ex. 2 (Gonzales Decl.) at ¶¶ 9-16. Instead,
13 investigators are only able to obtain “information provided [that] has been limited to general
14 account information about a given suspect and/or metadata and/or log information about the
15 Messenger communications of that suspect.” *Id.* at ¶ 14. Once again, this is the equivalent of
16 trying to divine the substance of a letter between two parties by only using the visible information
17 on the outside of a sealed envelope.

18 Instead, the State is forced to try to obtain the device that the suspect used to send
19 communications via Messenger—which itself requires separate legal process—and then attempt
20 to forensically extract the data using sophisticated software. *See* Ex. 1 (Defonseka Decl.) at ¶¶ 5-
21 8. Even this time-consuming technique has its limits. For example, it is not possible to obtain the
22 critical evidence if the device is “locked,” or if the suspect has deleted data prior to relinquishing
23 his phone. *Id.* at ¶ 8; *see also* Ex. 2 (Gonzales Decl.) at ¶ 19 (describing commonplace “destruction
24 of the evidence sought by investigators” when trying to acquire Messenger communications).

25 ///

26 ⁴ Further, even if Meta [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 III.

2 **PROCEDURAL HISTORY**

3 On January 30, 2024, the Nevada Attorney General’s Office filed this action on the State’s
4 behalf. On February 20, 2024, the State served the Summons and Complaint on Defendant Meta’s
5 Resident Agent on file with the Nevada Secretary of State and emailed service of process to
6 Meta’s counsel defending similar claims in other actions. *See* Gayan Decl. at ¶¶ 4-6.

7 IV.

8 **LEGAL STANDARD**

9 **Unlike other litigants** that must meet the typical NRCP 65 requirements, “[t]o obtain
10 injunctive relief in a statutory enforcement action, **a state or government agency need only**
11 **show**, through competent evidence, **a reasonable likelihood that the statute was violated** and
12 that the statute specifically allows injunctive relief.” *State ex rel. Off. of Att’y Gen., Bureau of*
13 *Consumer Prot. v. NOS Commc’ns, Inc.*, 120 Nev. 65, 69, 84 P.3d 1052, 1055 (2004) (emphasis
14 added). In considering injunctive relief, courts also weigh the potential hardships to the relative
15 parties and others. *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov’t*, 120 Nev. 712,
16 721, 100 P.3d 179, 187 (2004). “The legal standard for issuing a temporary restraining order is
17 ‘substantially identical’ to the standard for issuing a preliminary injunction.” *Pasaye v. Dzurenda*,
18 375 F. Supp. 3d 1159, 1164 (D. Nev. 2019) (internal quotations omitted). The State need not
19 provide security to obtain injunctive relief. *See* NRCP 65(c).

20 V.

21 **ARGUMENT**

22 **A. The State is Entitled to a Temporary Restraining Order to Stop Meta’s Conduct.**

23 Nevada law is clear: “To obtain injunctive relief in a statutory enforcement action, a state
24 or government agency need only show, through competent evidence, a reasonable likelihood that
25 the statute was violated and that the statute specifically allows injunctive relief.”
26 *State v. NOS Commc’ns, Inc.*, 120 Nev. at 69, 84 P.3d at 1055. The State meets this two-prong
27 test.

1 ***1. The Nevada Deceptive Trade Practices Act Specifically Allows Injunctive Relief.***

2 The State filed its Complaint against Meta regarding its Messenger platform on January
3 30, 2024. As a part of that Complaint, the State has alleged multiple violations of the NDTPA.
4 *See, e.g.*, Compl. at Counts I and II. In turn, the NDTPA states that:

5 If the Attorney General has reason to believe that a person has
6 engaged or is engaging in a deceptive trade practice, the Attorney
7 General may bring an action in the name of the State of Nevada
8 against that person *to obtain a temporary restraining order, a
preliminary or permanent injunction*, or other appropriate relief,
including, without limitation, the recovery of a civil penalty,
disgorgement, restitution or the recovery of damages.

9 NRS 598.0963(3) (emphasis added). Clearly, the State has the authority both to file the Complaint
10 and to seek injunctive relief under the NDTPA, thus satisfying the *NOS* court’s second prong.
11 120 Nev. at 69, 84 P.3d at 1055.

12 ***2. The State’s Competent Evidence Establishes a Reasonable Likelihood That***
13 ***Meta Violated the Statute.***

14 Because the State easily meets the *NOS* court’s second prong, the first *NOS* prong dictates
15 the result. The State’s competent evidence, specifically the evidence cited in the Complaint and
16 the Declarations of Anthony Gonzales and Christopher Defonseka, show a reasonable likelihood
17 that Meta violated the NDTPA in its use of E2EE on Messenger for known or suspected Young
18 Users’ accounts. The NDTPA identifies a host of conduct that violates the Act, and the State has
19 pled that Meta’s conduct violates many of these statutory prohibitions with its Messenger
20 platform. *See* Compl. at ¶¶ 459-497. These violations include both “deceptive” and
21 “unconscionable” acts, as defined by statute.

22 **i. The NDTPA’s Prohibition on Deceptive Practices**

23 The State’s Complaint lists multiple, material instances in which Meta engaged in a
24 deceptive trade practice forbidden by the NDTPA. Compl. at ¶¶ 459-482. For purposes of this
25 Motion, the State need only demonstrate a reasonable likelihood of single violation of the NDTPA
26 based on Meta’s use of E2EE for Young Users’ accounts in Nevada, and thus for brevity’s sake
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28

1 here addresses a subset of the NDTPA violations that the State alleged arising from Meta’s
2 deceptive trade practices.

3 As a threshold matter, the State alleges that Meta “willfully committed . . . deceptive trade
4 practices by violating one or more laws relating to the sale or lease of goods or services” in
5 violation of NRS § 598.0923(1)(c). Compl. ¶ 473. Nevada law states that “[a] **person shall not**
6 **willfully use or attempt to use encryption**, directly or indirectly, to: (a) Commit, facilitate,
7 further or promote any criminal offense; (b) Aid, assist or encourage another person to commit
8 any criminal offense; (c) Conceal the commission of any criminal offense; (d) Conceal or
9 protect the identity of a person who has committed any criminal offense; or (e) Delay, hinder or
10 obstruct the administration of the law.” NRS § 205.486 (“Unlawful use of encryption”)
11 (emphasis added). Meta [REDACTED]

12 [REDACTED] This
13 amounts to both direct and indirect aiding and abetting of child predators, via the use of E2EE, in
14 violation of NRS § 205.486(1)(a)-(d). And, as demonstrated in the Gonzales Declaration, Meta
15 knows that E2EE drastically limits the ability of law enforcement to obtain critical evidence in
16 their investigations—namely, the substance of a suspect’s Messenger communications—which is
17 in violation of NRS § 205.486(1)(e). Gonzales Decl. ¶¶ 13-27.

18 But more broadly, the State takes aim at Meta’s misrepresentations and omissions
19 surrounding the safety of Messenger for Young Users, which give rise to the following allegations
20 of NDTPA violations:

- 21 • Compl. at ¶ 467 – Meta “willfully violated the Deceptive Trade Practices Act by
22 committing deceptive trade practices by representing that Messenger ‘ha[s] ...
23 characteristics, ... uses, [or] benefits ...’ that it does not have. NRS § 598.0915(5)”
- 24 • Compl. at ¶ 468 – Meta “caus[ed] confusion or misunderstanding as to the safety and risks
25 associated with the Messenger social media platform. NRS § 598.0915(2).”
- 26 • Compl. at ¶ 469 – Meta made “‘false representation[s] as to [the] affiliation, connection,
27 association with or certification’ of Messenger. NRS § 598.0915(3).”

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- Compl. at ¶ 470 – Meta “Represent[ed] that Messenger 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).”
- Compl. at ¶ 471 – Meta “represent[ed] that Messenger was safe and not harmful to Young Users’ wellbeing when such representations were untrue, false, and misleading. NRS § 598.0915(15).”
- Compl. at ¶ 472 – Meta “us[ed] exaggeration and/or ambiguity as to material facts and omit[ed] material facts, which had a tendency to deceive and/or did in fact deceive. NRS § 598.0915(15).”

The Complaint lists myriad instances in which Meta publicly represented that its platforms—including Messenger—were safe for Young Users, and that it prioritized children’s well-being above all else. As one example,

[REDACTED]

1 Similarly, Meta publicly touted its use of end-to-end encryption as a positive for users,
2 meant to *protect* them from harm—going so far as to call it an “extra layer of security” for users.
3 *Id.* at ¶ 203.

4 But in reality [REDACTED]

15 The State’s Complaint demonstrates that Meta [REDACTED]

18 The

19 well-pleaded allegations in the Complaint readily demonstrate multiple violations of the NDTPA,
20 satisfying the first *NOS* prong and warranting the relief sought by the State in the instant Motion.

21 **ii. Unconscionable Trade Practices**

22 Under the NDTPA, unconscionable trade practices are those, *inter alia*, which “[t]ake[]
23 advantage of the lack of knowledge, ability, experience or capacity of the consumer to a grossly
24 unfair degree.” NRS § 598.0923(2)(b)(1). Put simply, Meta’s use of E2EE on the Messenger
25 platform for Young Users’ accounts is an unconscionable trade practice.

26 Meta knowingly [REDACTED]

1 [REDACTED]
2 [REDACTED] Law enforcement agencies across the country are doing
3 everything that they can to stem the tide of predators preying on our children. One way in which
4 they do this is by proactively seeking out these predators through sting operations, known as “john
5 stings.” Ex. 2 (Gonzales Decl.) at ¶ 7. These stings are often set-up on direct messaging apps like
6 Messenger. *Id.* Predators use these apps—and specifically Messenger—in no small part because
7 of the E2EE. *Id.* at ¶¶ 10, 27-29. When law enforcement catches a predator in one of these stings,
8 they may recover electronic devices, but may be unable to open the devices. Ex. 1 (Defonseka
9 Decl.) at ¶ 8 (forensic imaging of a device only possible if the device is unlocked). When that
10 happens the investigators cannot see into the perpetrator’s Messenger app. *Id.* The law
11 enforcement officers may attempt a subpoena or search warrant to Meta, but because of end-to-
12 end encryption, Meta is unable to give them any of the actual messages or pictures sent. Ex. 2
13 (Gonzales Decl.) at ¶¶ 16-18. The same applies to the underage users of Messenger who are
14 victims of these predators. Without permission to access the child’s device, or the predator’s
15 device, law enforcement’s hands are often tied. They cannot fully complete their investigation
16 when both the victim’s and perpetrator’s Messenger account is encrypted. Law enforcement is
17 not able to see potentially criminal events happening on Messenger, either with a perpetrator who
18 they may have caught already, or one whom they would not know about without access to a
19 victim’s Messages under proper procedure—assuming the child victim did not delete them before
20 law enforcement could obtain the device. This means that Nevada law enforcement cannot
21 adequately protect Meta’s Young Users from dangerous individuals seeking to harm them.

22 Meta publicly positions E2EE as a *security* feature. Compl. at ¶ 203. And for adults of
23 consenting age, whom the law presumes are able to take care of themselves, it may be. But Meta

24 [REDACTED]
25 [REDACTED]

26 [REDACTED] This is the paradigmatic
27 example of “[t]aking] advantage of the lack of knowledge, ability, experience or capacity of the
28

1 consumer to a grossly unfair degree[.]” NRS § 598.0923(2)(b)(1). Meta is telling the world that
2 E2EE is a “security” measure, meant to ensure their privacy, when in fact [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 It is evident then that the end-to-end encryption feature of Meta’s Messenger platform
6 constitutes an unconscionable trade practice under the NDTPA.

7 **3. The Court Has Broad Discretion to Grant a Preliminary Injunction.**

8 Finally, “[t]he decision whether to grant a preliminary injunction is within the sound
9 discretion of the district court whose decision will not be disturbed on appeal absent an abuse of
10 discretion.” *Dangberg Holdings Nev., L.L.C. v. Douglas Cty.*, 115 Nev. 129, 142-43, 978 P.2d
11 311, 319 (1999) (citation omitted). And, in exercising that discretion, this Court may also consider
12 the relative interests of the parties—the harm to the non-moving party if the injunction issues
13 versus the harm to the moving party absent the injunction. *See Clark Cty. Sch. Dist.*, 112 Nev. at
14 1150, 924 P.2d at 719.

15 A court will generally balance the threat of the injury to the plaintiff against the threat of
16 harm an injunction may cause to the defendant, as well as whether injunctive relief would be
17 contrary to the public interest. *See Ottenheimer v. Real Estate Div.*, 91 Nev. 338, 342, 535 P.2d
18 1284, 1285 (1975) (holding district court erred in denying preliminary injunction because burden
19 on defendant was small versus irreparable injury to plaintiffs); *Ellis v. McDaniel*, 95 Nev. 455,
20 459, 596 P.2d 222, 225 (1979); *Clark Cty. Sch. Dist.*, 112 Nev. at 1150, 924 P.2d at 719. Balancing
21 the relative hardships is an equitable principle, and the Nevada Supreme Court has held that, in
22 the context of injunctive relief, it is available “only to innocent parties who proceed without
23 knowledge or warning that they are acting contrary to others’ vested property rights.” *Gladstone*
24 *v. Gregory*, 95 Nev. 474, 480, 596 P.2d 491, 495 (1979).

25 Meta has noted many times that E2EE is a privacy feature for users. Meta says that even
26 they themselves cannot pierce the encryption put into place on their users’ messages. Based on
27 these representations, restricting E2EE from Young Users’ Messenger accounts in Nevada as the
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1 State asks will not adversely affect Meta. There would be minimal or no cost to the company in
2 complying with such an injunction, and therefore the burden on the company is light. However,
3 as noted previously in this brief, the threat to the children of Nevada from Meta’s actions thus far
4 is grave. And therefore the balancing of issues should weigh heavily towards granting the State’s
5 Motion.

6 **VI.**

7 **CONCLUSION**

8 For the foregoing reasons, the State of Nevada respectfully requests that the Court issue
9 the requested Temporary Restraining Order consistent with the relief requested herein and set a
10 prompt hearing and briefing schedule on a Permanent Injunction.

11 DATED this 20th day February, 2024.

12 STATE OF NEVADA, OFFICE OF THE
13 ATTORNEY GENERAL

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26 Las Vegas, Nevada 89169
27 *Attorneys for the State of Nevada*
28

EXHIBIT 1

DECLARATION

Chris D. Defonseka, declares and states under penalty of perjury:

1. I am currently employed as a Digital Forensic Analyst with the Investigations Division of the Nevada Attorney General's Office.
 - a. I have a Diploma in Computer Technology from Western Technical College, Van Nuys, California.
 - b. I have a Bachelor's in Business Administration from Southern University in New Orleans, Louisiana.
 - c. I am Certified by The International Society of Forensic Computer Examiners as a Certified Computer Examiner (CCE).
 - d. I am Certified by Cellebrite Mobile Forensics as a Cellebrite Certified Physical Analyst, and a Cellebrite Certified Operator (CCO, CCPA).
 - e. I am Certified by the International Association of Computer Investigative Specialists as a Certified Electronic Evidence Collection Specialist (CEECS).
2. During the course of my employment with the Attorney General's Office, I have been actively involved with the Internet Crimes Against Children ("ICAC") Taskforce and work primarily from their offices.
3. I have worked in this capacity with the Attorney General's Office for twenty-two (22) years and two (2) months.
4. While my work involves many areas of investigation, one specific area of investigation involves the forensic examination and analysis of software, hardware, and devices potentially containing evidence of human trafficking and sexual exploitation of minors.
5. As a part of my employment with the Attorney General's Office, I receive from investigators electronic devices owned by witnesses, victims, or suspects obtained during the course of their investigations. I analyze the contents of those devices through the use of forensic software and hardware tools which allow me to make a digital copy of the device on another device which is owned by the agency.
6. Forensic analysis allows me to fully examine and analyze the digital copy without compromising or damaging the native information contained on the original device.

///

- 1 7. I routinely attempt to copy all applications on the device, including any
2 messaging applications such as Meta's end-to-end encrypting messaging
3 application, Messenger. Once copied, the investigators should be able to
4 access the contents of the messages on such an application. On some
5 occasions, the investigators may not be able to access the information.
- 6 8. However, I can only perform these forensic tasks if the device is "unlocked,"
7 which enables me to copy the contents and information.
- 8 9. If the investigator suspects that the Messenger application contains evidence
9 which is needed in the course of an investigation and I cannot access the
10 application because I cannot access the device, the investigator must issue a
11 search warrant to Meta in an attempt to get the information.
- 12 10. However, due to the end-to-end encryption established by Meta for Messenger,
13 Meta is unable to supply the contents of messages to the investigator when a
14 search warrant is issued.
- 15 11. The only information produced by Meta pursuant to a search warrant
16 regarding messages from Messenger is an activity log showing when messages
17 were sent and received but does not contain the messages themselves due to
18 the end-to-end encryption.

19 I declare under penalty of perjury of the laws of the State of Nevada that the
20 foregoing is true and correct.

21 DATED February 15th 2024.

22 *Chris DeFonseka*

23 _____
24 Chris D. Defonseka
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EXHIBIT 2

DECLARATION

Anthony L. Gonzales, declares and states under penalty of perjury:

1. I am a Criminal Investigator II with the State of Nevada, Office of the Attorney General (OAG) and have been employed since February 7, 2022. I graduated from the Clark County Department of Juvenile Justice Services, Probation Officer II Peace Officer Standards and Training (P.O.S.T.) Academy Class 6-2018. I successfully completed 280 hours of instruction in a course where I obtained a Category II P.O.S.T. Basic Certificate and through advanced training later obtained an advanced P.O.S.T. certificate. I obtained a Bachelor's of Science from Northern Arizona University in Flagstaff, Arizona, majoring in Criminal Justice.
2. In my position with the OAG, I have attended courses in basic and advanced investigations and received specialized training. I have participated in numerous arrests and have recovered evidence of criminal violations. I have investigated various criminal offenses including public assistance fraud, theft, and intellectual property rights violations. I am currently assigned to the Investigation Division and am responsible for investigating human trafficking and other crimes to include, but not be limited to, the Subject Offenses listed below and other violations of Nevada Revised Statutes (NRS). I am also a member of the Child Exploitation Task Force of the Federal Bureau of Investigation (FBI) and the Southern Nevada Human Trafficking Task Force.
3. Prior to working for the OAG, I was employed by the Nevada Youth Parole Bureau for four (4) years, where I was a Parole Officer.
4. In my position, a significant portion of employment duties involve collecting evidence and developing case files involving potential suspects in criminal and civil related matters.
5. In addition, my employment duties involve preparing and executing legal documents such as affidavits, search warrants, arrest warrants, and subpoenas to continue the criminal justice process and advance potential criminal prosecutions.
6. As part of my employment duties, I conduct criminal investigations involving violations of multiple laws, including but not limited to, human trafficking (including minors), missing children, and other harms against children.
7. In addition, as part of my employment duties, I utilize social media platforms to conduct investigations.
8. In my experience, many crimes against children frequently begin with, and are carried out by, contact between the perpetrator and the victim over the Internet.

- 1 9. In particular, social media and messaging apps are used commonly by
2 individuals to search for and identify potential child victims, make initial
3 contact with those children, and maintain that contact in attempting or
4 completing a crime or multiple crimes.
- 5 10. Further, in my experience, individuals who seek to use online messaging to
6 contact, communicate with, and commit crimes against children prefer to use
7 platforms with end-to-end encryption.
- 8 11. In layman's terms, end-to-end encryption is technology that ensures
9 communications between users remain private between the users.
- 10 12. As a result, messages that are sent using end-to-end encryption are effectively
11 impossible for law enforcement to obtain from the service provider via legal
12 process.
- 13 13. In the course of my employment, I have sought information related to Meta's
14 Messenger product, including the messages themselves that were sent and
15 received via Messenger by suspects we believe were committing or attempting
16 to commit crimes against children.
- 17 14. In these instances, my law enforcement colleagues, and I have had to engage
18 in lengthy legal processes in order to obtain information regarding the
19 communications from Meta. The steps include the following:
- 20 a. Creating an account on Meta's Law Enforcement Portal.
 - 21 b. Submitting a preservation request.
 - 22 c. Entering the responsible investigator's contact information and the
23 request details, such as Case Number and the account identified that is
24 being preserved. The account can be documented using either User ID,
25 Vanity URL, or email address.
 - 26 d. User ID – The numeric ID number that was assigned to the Facebook
27 Account.
 - 28 e. Vanity URL – The URL for that person's Facebook page, such as
www.facebook.com/Myvanityname.
 - f. Email Address – Target email address.
 - g. Articulate probable cause in a sworn affidavit and submit it to a District
Court Judge for approval.
 - h. Submit a non-disclosure order in addition to the probable cause affidavit
to a District Court Judge (Meta's policy states that it is to notify
individuals who use their service of requests for their information prior to

1 disclosure unless they are prohibited by law from doing so or in exceptional
2 circumstances).

3 i. Access the Law Enforcement Portal and submit the signed and approved
4 Search Warrant and Non-Disclosure.

5 15. Typically, steps described above can take anywhere from fourteen (14) to
6 thirty (30) days before any information is provided to the Attorney General's
7 Office from Meta.

8 16. When Meta has responded to the legal process seeking information about a
9 suspect's activity on Messenger, the information provided has been limited to
10 general account information about a given suspect and/or metadata and/or log
11 information about the Messenger communications of that suspect but does not
12 contain the messages that were sent or received through end-to-end
13 encryption.

14 17. Meta will not provide the substance of the suspect's Messenger
15 communications.

16 18. Based on my experience, it is my understanding that Meta's refusal to provide
17 the substance of the suspect's Messenger communications is, at least in part,
18 because Meta has taken the position that it does not have access to the
19 messages sent or received through end-to-end encryption, because end-to-end
20 encryption automatically shields that information from everyone, including
21 Meta, other than the message's sender and recipient.

22 19. Therefore, the only recourse the Attorney General's Office has is to obtain the
23 messages sent or received through end-to-end encryption using Messenger,
24 either through a consensual search of the victim's mobile device, or through
25 the legal process as described above to gain access the suspect's mobile device
26 (this legal process is separate and apart from the legal process we engage in
27 to seek information directly from Meta).

28 20. If authority to access the mobile device is granted, the Attorney General's
Office must then engage in sophisticated and time-consuming forensic
analysis in order to potentially extract the messages from the device. These
extraction efforts do not always work, which frustrates and potentially
thwarts the criminal investigation.

The legal processes as described above, including the lack of response Meta
provides regarding end-to-end encrypted messages, cause significant delay of
the investigation of individuals who are potentially actively harming or
planning to harm children in Nevada. This delay could, and does often, lead
to the destruction of the evidence sought by investigators.

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22. In my experience, social media platforms that do not utilize end-to-end encryption of users' private messages are significantly better at identifying and reporting child sexual abuse material ("CSAM") (for example email services like Yahoo) and are quicker to provide responses to law enforcement legal process, as well as providing a more comprehensive set of information, including the messages. In part, it is my understanding that this is because entities that do not provide end-to-end encryption are better able to identify CSAM on their platforms.
 23. The Attorney General's Office relies on social media and messaging platforms to report CSAM when they identify it being transmitted by their users.
 24. For example, many CSAM images (once these images have been identified as CSAM images in other investigations) have been assigned a unique digital signature, or a "hash," by various governmental entities or advocacy groups, who in turn maintain databases of hashes, so that law enforcement may quickly identify illegal CSAM images.
 25. When a social media or messaging platform identifies an image with a hash that matches known CSAM, they are obligated to report the presence of that image to law enforcement.
 26. Through this reporting system, the Attorney General's Office has been alerted to many instances of harmful online activity on a host of social media and messaging platforms, which has resulted in coordinated, efficient, and effective criminal investigations and prosecutions.
 27. In my experience, because end-to-end encryption keeps messages confidential, suspects often utilize end-to-end encryption in communicating with victims.
 28. In my experience, individuals intending to communicate with children in Nevada in order to commit the crimes I've described would not use the Messenger platform if it did not have end-to-end encryption that makes their messages invisible to Meta for fear of being discovered, arrested, and prosecuted.
 29. Based on my experience, Messenger's end-to-end encryption feature gives potential criminals easy access to secretly message Nevada children, many of which already use Instagram and Facebook—both of which use Messenger as their direct-messaging platform. But for this easy access to search for and communicate secretly with children on Meta's platforms, I believe suspects would have a more difficult time locating and communicating secretly with Nevada children.
 30. Within the last twelve (12) months, six thousand and seven hundred and seventy-three (6,773) CyberTips were reported to the Southern Nevada

1 Internet Crimes Against Children (ICAC) Taskforce, approximately seven
2 hundred and twenty-one (721) of those were related to Meta (Instagram,
Facebook).

3 I declare under penalty of perjury of the laws of the State of Nevada that the
4 foregoing is true and correct.

5 DATED February 15th, 2024.

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Anthony L. Gonzales

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 The State of Nevada, Plaintiff(s) | CASE NO: A-24-886110-B
7 vs. | DEPT. NO. Department 16
8 Meta Platforms, Inc.,
9 Defendant(s)

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11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order Shortening Time was served via the court's electronic eFile
system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 2/20/2024

15 Jon Jones r.jones@kempjones.com
16 Michael Gayan m.gayan@kempjones.com
17 Nicole McLeod n.mcleod@kempjones.com
18 Don Springmeyer d.springmeyer@kempjones.com
19 Katrina Stark k.stark@kempjones.com
20 Monique Lunnon m.lunnon@kempjones.com
21 Ali Lott a.lott@kempjones.com
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25 Raquel Fulghum rfulghum@ag.nv.gov

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