

**PUBLIC**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Lina M. Khan, Chair**  
                                 **Rebecca Kelly Slaughter**  
                                 **Alvaro M. Bedoya**  
                                 **Melissa Holyoak**

*In the Matter of*

**FACEBOOK, Inc.,**  
*a corporation*

**Respondent.**

Docket No. C-4365

**MOTION OF RESPONDENT META PLATFORMS, INC. (F/K/A FACEBOOK, INC.)  
FOR CONFIDENTIAL OR *IN CAMERA* TREATMENT**

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## INTRODUCTION

Pursuant to 16 C.F.R. §§ 4.9(c) and 4.2, Respondent Meta Platforms, Inc. (f/k/a Facebook, Inc.) (“Meta”) respectfully moves for (1) confidential or *in camera* treatment of portions of the documents filed in its response to the Federal Trade Commission’s (“Commission” or “FTC”) May 3, 2023 Order to Show Cause (“OTSC”) and (2) the withholding of Meta’s exhibits in their entirety.

On May 3, 2023, the Commission filed both public and non-public versions of the OTSC,<sup>1</sup> Preliminary Findings of Fact<sup>2</sup> (“PFOF”), and a Proposed Modified Decision and Order<sup>3</sup> (“Proposed Order”), and withheld, in their entirety, exhibits to its PFOF. Meta has limited its request for confidential or *in camera* treatment to those portions of the documents comprising its response to the OTSC that contain information that is the same or substantially equivalent to what the Commission redacted in its own filings on May 3. These portions meet the applicable standards for confidential treatment and contain competitively sensitive, confidential, commercial information about Meta’s privacy program (the “Privacy Program” or the “Program”), as well as its systems, technological capabilities, and project plans.

As explained below, and in the accompanying declarations of Nazneen Mehta, Director and Associate General Counsel, Regulatory, at Meta (“Mehta Declaration”) and Michel Protti, Chief Privacy Officer, Product and the Designated Compliance Officer at Meta (“Protti Declaration”), confidential treatment of this information is justified by 16 C.F.R. § 4.9(c), by

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<sup>1</sup> *In re Facebook, Inc.*, Dkt. No. C-4365 (F.T.C. May 3, 2023) (“OTSC”), available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/C4365-Commission-Order-to-Show-Cause-%28Redacted-Public%29.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/C4365-Commission-Order-to-Show-Cause-%28Redacted-Public%29.pdf).

<sup>2</sup> *In re Facebook, Inc.*, Dkt. No. C-4365 (F.T.C. May 3, 2023) (“PFOF”), available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/c4365facebookpreliminaryfofpublic.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/c4365facebookpreliminaryfofpublic.pdf).

<sup>3</sup> *In re Facebook, Inc.*, Dkt. No. C-4365 (F.T.C. May 3, 2023) (“Proposed Order”), available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/c4365facebookproposedmodifieddecisionandorder.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/c4365facebookproposedmodifieddecisionandorder.pdf).

relevant precedent, applicable rules, and prior orders of the Commission or its administrative law judges.

Accordingly, Meta respectfully requests confidential or *in camera* treatment of portions of Meta’s Brief in Response to the Order to Show Cause; Meta’s Response to the Commission’s Preliminary Findings of Fact; the Protti Declaration; the expert report of Larry D. Thompson, Counsel, Finch McCranie, LLP; and the expert report of Eugene F. Soltes, McLean Family Professor of Business Administration at Harvard Business School (together, “Meta’s Filings” or “Filings”).<sup>4</sup> It also requests that its exhibits to the Filings (“Exhibits”) be withheld in their entirety. In each case, the confidential treatment requested by Meta is consistent with the treatment afforded to the same or substantially equivalent information in documents already filed by the Commission in this proceeding.

### **BACKGROUND**

Prior to the filing of the OTSC and PFOF, at the Commission’s request, Meta reviewed over 50 potential exhibits (the “Privacy Program Materials”)—totaling over one thousand pages—that Meta or the independent assessor (“Assessor”) previously provided to the Commission pursuant to Part XV of Attachment A of the Stipulated Order entered in *United States v. Facebook, Inc.*, No. 19-cv-02184 (D.D.C. Apr. 23, 2020) (Dkt. No. 35) (the “Order”). In addition and again at the Commission’s request, Meta reviewed approximately 10 documents previously provided to the Commission pursuant to: (1) two civil investigative demands (“CIDs”) requesting information regarding two 2019 technical errors involving the Messenger Kids product and (2) a demand letter issued pursuant to Part XV of the Order regarding a 2020

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<sup>4</sup> Meta is also filing the expert report of David Martens, but is not seeking confidential or *in camera* treatment of any portions of that document.

coding oversight relating to access to user data by third-party apps (collectively, the “Investigation Materials”). The Privacy Program Materials included the Assessment report produced by the Assessor at the conclusion of the initial Assessment (“2021 Assessment Report”), which contains over 200 pages of detailed discussion and analysis of the design and operation of every aspect of Meta’s Privacy Program, including a list and details regarding the Safeguards that make up the Program, along with Assessor workpapers discussing the Assessor’s preliminary findings and Meta’s Program in even greater detail. (Mehta Decl. ¶ 4.) The Privacy Program Materials also included transcripts of multiple depositions, hundreds of pages of narrative responses, and underlying source material concerning these issues. (Mehta Decl. ¶ 4.) The Investigation Materials included white papers, narrative responses and documents submitted pursuant to interrogatory and document requests contained in the Commission’s CIDs and Part XV demand letter, and a transcript of a 30(b)(6) investigational hearing related to the 2020 coding errors. (Mehta Decl. ¶ 5.)

At the Commission’s request, Meta reviewed the Privacy Program Materials and Investigation Materials in order to identify any information that is protected from disclosure under *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019)—i.e., information that is commercial in nature, “customarily and actually treated as private by its owner,” and was “provided to the government under an assurance of privacy.” (Mehta Decl. ¶ 6–7.)

The majority of the Privacy Program Materials have never been made public because they contain significant amounts of confidential, competitively sensitive information concerning the operation of Meta’s Privacy Program and its broader business efforts and product plans.

Indeed, the Commission's Office of General Counsel specifically reviewed the 2021 Assessment Report in 2021, and determined that significant portions were protected from disclosure.<sup>5</sup>

On March 30, 2023, and April 11, 2023, Meta identified for the Commission the portions of the Privacy Program Materials and the Investigation Materials that Meta believed contained confidential, commercial information or personally identifiable information protected from disclosure (the "Protected Information").

In addition, on May 3, 2023, the Commission's Office of General Counsel provided Meta with a proposed public copy of the PFOF that redacted the majority of the Protected Information. (Mehta Decl. ¶ 9.) The notice cited Rule 4.9(c)(3). (*Id.*) In response, Meta identified several additional portions of the PFOF that also reflected Protected Information. (Mehta Decl. ¶ 9.)

Accordingly, the Commission properly redacted from the public versions of the OTSC and PFOF that it filed on the docket portions that reflected Protected Information, and properly withheld its exhibits to the PFOF, including the 2021 Assessment Report, in full from the public record. (Mehta Decl. ¶¶ 20, 22.)

The vast majority of Meta's redactions in its Filings reflect the same Protected Information. The only other, "new" information that Meta has redacted in its Filings is taken from or relates to the Assessor's report from the first biennial Assessment (the "2023 Assessment Report"), which Meta is introducing into the record. Meta is also introducing three additional Privacy Program documents into the record: (1) the transmittal letter that accompanied Meta's submission of the 2021 Assessment Report; (2) a presentation entitled "2023 Assessment Status & Report Update" that the Assessor provided to Commission staff on May 3, 2023; and (3) the

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<sup>5</sup> The Commission's Office of General Counsel subsequently determined that material Meta provided to the Commission under the terms of the Order is protected from public release because it was provided pursuant to or in lieu of compulsory process. (Mehta Decl. ¶ 14.)



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transmittal letter that accompanied Meta’s submission of the 2023 Assessment Report (together with the 2023 Assessment Report, the “Supplemental Privacy Program Documents”). (Mehta Decl. ¶ 23.) In addition, Meta is introducing nine additional documents related to the 2019 Messenger Kids technical errors and the 2020 coding oversight: (1) the Commission’s two CIDs issued in the Messenger Kids matter; (2) Meta’s July 29, 2020 and August 5, 2020 letters to the Commission, responding to the June 30, 2020 demand letter issued pursuant to Part XV of the Order requesting information related to the 2020 coding oversight; (3) an August 31, 2020 letter from Meta to the Commission transmitting document productions related to the Messenger Kids technical errors; (4) an April 6, 2021 letter from Meta to the Commission providing additional information related to the relationship between Messenger Kids and Messenger code; (5) a May 28, 2021 letter from the Commission to Meta requesting information related to employees who had responsibility over issues related to the Messenger Kids technical errors and the coding oversight; (6) Meta’s June 11, 2021 letter responding to the Commission’s May 28, 2021 request; and (7) the transcript of the investigational hearing for Hady Abou El-Kheir related to the Messenger Kids technical errors, conducted on October 14, 2021 (the “Supplemental Investigation Documents”). (Mehta Decl. ¶ 29.)

Meta proposes to withhold these Supplemental Privacy Program Documents and Supplemental Investigation Documents (together, the “Supplemental Documents”) in their entirety, consistent with the Commission’s treatment of analogous documents in connection with its OTSC and PFOF.<sup>6</sup> And in its Filings, Meta proposes to redact information drawn from the Supplemental Documents only to the extent it is analogous to the Protected Information that the

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<sup>6</sup> While Meta believes that withholding the Supplemental Documents consistent with the Commission’s treatment of its own exhibits is the appropriate course of action for the reasons set forth herein, *see infra* Section I.C, it has also provided redacted versions of these documents.

Commission has already redacted. Specifically, Meta seeks to redact confidential, commercial information—i.e., those portions of its Filings setting out nonpublic operational details of the components of Meta’s Privacy Program, as well as further explanation of how it has evolved over time, along with an updated list of the Safeguards the Privacy Program comprises. Meta also seeks to redact portions of its Filings containing confidential, commercial information drawn from the Investigation Materials and similarly redacted in the Commission’s filings.

### **ARGUMENT**

#### **I. META’S REQUEST IS CONSISTENT WITH THE COMMISSION’S APPROACH TO THE OTSC, PFOF, PROPOSED ORDER, AND EXHIBITS THERETO**

As a threshold matter, Meta’s motion should be granted because the information for which Meta is seeking confidential or *in camera* treatment in Meta’s Filings and Exhibits consists exclusively of information that (1) the Commission has already determined should be treated confidentially or (2) information that is directly analogous to information the Commission has already determined should be treated confidentially under applicable law.

Rule 4.9(c)(1) provides that “[p]ersons submitting material to the Commission described in this section may designate that material or portions of it confidential and request that it be withheld from the public record” where “supported by a showing of justification” based on relevant precedent and authorities. Because no Administrative Law Judge “is presiding over the proceeding,” *see* 16 C.F.R. § 4.9(c)(2), Rule 4.9(c)(3) provides that “the General Counsel or the General Counsel’s designee may determine, with due regard for legal constraints and the public interest, to withhold such materials from the public record.” In this motion, Meta is seeking nothing more than confidential or *in camera* treatment of information that is the same as or substantially equivalent to the Protected Information that the Commission has already

determined should be withheld or redacted from the public record and supported by an adequate showing of justification under the standard the Commission applied to its own filings.

Meta's proposed approach to the confidential treatment of its Filings meets the *Argus Leader* standard for confidential treatment that the Commission applied to its own filings. The information Meta is seeking to redact or withhold is "commercial" in nature, "customarily and actually treated as private by" by Meta, and was "provided to the government under an assurance of privacy." *Argus Leader*, 139 S. Ct. at 2366.

#### **A. The Privacy Program Documents**

Meta's approach—the redaction of Protected Information in Meta's Filings and the withholding of the Supplemental Privacy Program Documents—would protect "commercial" information instrumental to Meta's operations. *See 100Reporters LLC v. U.S. Dep't of Just.*, 316 F. Supp. 3d 124, 142 (D.D.C. 2018) (holding information regarding companies' implementation of their compliance programs is "commercial" because it is instrumental to companies' operations). Meta has invested billions of dollars to develop its Privacy Program and has dedicated extensive resources to its continued maturation, including over the course of multiple Assessments. (Protti Decl. ¶¶ 5–6; Mehta Decl. ¶ 25.) Further, the Filings and Exhibits also include sensitive commercial information about Meta's technological capabilities and plans for future Program and product development more broadly, including information that bears on potential new products, features, and technology that Meta may implement in the future to benefit its users and other third parties. (Mehta Decl. ¶ 19.)

Second, Meta's approach would protect information that Meta itself customarily and actually treats as "private." *See Argus Leader*, 139 S. Ct. at 2366. Meta is only seeking to protect information regarding its Privacy Program that it does not release to its competitors or the public. (Mehta Decl. ¶ 12.)

Finally, Meta's approach would protect information that was provided to the Commission with an expectation of confidentiality; it is drawn exclusively from materials that Meta produced to the Commission with an explicit request for confidential treatment and that the Commission has determined are exempt from public disclosure. (Mehta Decl. ¶ 12); *see supra* n.5.

#### **B. The Investigation Documents**

Meta's approach to redacting the Protected Information related to the Messenger Kids technical errors and the 2020 coding oversight in its Filings and Supplemental Investigation Documents is also consistent with the Commission's prior redactions to filings in this matter. As with the Privacy Program documents, Meta designated these materials—which contain personally identifiable information regarding non-executive Meta employees and passwords that Meta maintains as confidential from the public and were provided to the Commission in connection with the production of confidential materials to the Commission—as confidential, with the expectation that these materials would be exempt from public disclosure. Publicly disclosing the names of private employees who are not party to this matter would constitute an unreasonable breach of privacy for these individuals, while providing the public with no countervailing benefit. Additionally, disclosure of production passwords that Meta provided to the Commission creates a risk of disclosure of confidential materials that Meta has produced to the Commission. In addition, this Protected Information reveals information about Meta's "basic commercial operations," *100Reporters LLC*, 316 F. Supp. 3d at 140, insofar as it includes (1) information regarding allocation of employees for specific Meta projects and (2) technical details regarding product source code (Mehta Decl. ¶ 27). Meta treats this information as private. (*See* Mehta Decl. ¶ 27.)

**C. Meta Requests that Its Filings and Exhibits Be Accorded the Same Treatment as the Commission’s Filings and Exhibits**

For the reasons set forth above, Meta respectfully submits that Meta’s Filings and Exhibits, including the Supplemental Privacy Program Documents and Supplemental Investigation Documents, should be accorded the same confidential or *in camera* treatment as the Commission’s filings.

As a result, Meta requests that the Commission (1) permit Meta’s proposed redactions of Protected Information (and analogous information) in its Filings, and (2) withhold Meta’s Exhibits—i.e., the Supplemental Documents—from the docket in their entirety, consistent with the Commission’s treatment of its own Exhibits.

**II. META’S REDACTIONS ALSO MEET THE RULE 3.45 STANDARD**

Although Rule 3.45 does not apply because the Commission has not scheduled a hearing for the receipt of evidence or assigned an Administrative Law Judge, 16 C.F.R. § 3.45(b),<sup>7</sup> Meta’s proposed approach to redactions and withholding more than meets that standard, too.

Rule 3.45 provides that confidential or *in camera* treatment is appropriate where “public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation” requesting such treatment. 16 C.F.R. § 3.45(b). “The likely loss of business advantages is a good example of a ‘clearly defined, serious injury.’” *In re Dura Lube Corp.*, No. 9292, 1999 FTC LEXIS 255, at \*7 (F.T.C. Dec. 23, 1999) (Chappell, J.) (citation omitted). *In camera* treatment is also appropriate for business records “such as customer names, pricing to customers, business costs and profits, as well as business plans, marketing plans, or sales documents,” *In re 1-800 Contacts, Inc.*, No. 9372, 2017 FTC LEXIS 55, at \*5–6 (F.T.C. Apr. 4,

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<sup>7</sup> Rule 3.72(b) provides that subpart E of part 3 only applies if the Commission directs such hearings. 16 C.F.R. § 3.72(b).

2017) (Chappell, J.), and secret formulas, secret processes, other secret technical information, or information that is privileged, *see H. P. Hood & Sons, Inc.*, No. 7709, 1961 FTC LEXIS 368, at \*12 (F.T.C. Mar. 14, 1961); *In re Gen. Foods Corp.*, No. 9085, 1980 FTC LEXIS 99, at \*2 (F.T.C. Mar. 10, 1980); *In re Textron, Inc.*, No. 9226, 1991 FTC LEXIS 135, at \*1 (F.T.C. Apr. 26, 1991).

Courts have made clear that information about comparable compliance programs—including independent government-ordered third-party reviews and analyses of such programs—are competitively sensitive and the release of such information would result in a clearly defined, serious injury. For example, in *100Reporters*, the district court determined that significant portions of compliance monitor’s reports describing Siemens’ “compliance initiatives and business decisions,” details of the monitor’s activities, and changes to compliance procedures and processes in response to the monitor’s evaluation were protected from disclosure. 316 F. Supp. at 140–42. In an earlier opinion, the court recognized that “Siemens has invested resources in creating its compliance plan,” and allowing competitors “to take advantage of that plan” through public access “constitutes a competitive harm.” *100Reporters LLC v. U.S. Dep’t of Just.*, 248 F. Supp. 3d 115, 143 (D.D.C. 2017). Another district court similarly afforded confidential treatment to analogous information concerning pharmaceutical companies’ compliance programs and a government-ordered third-party review and assessment of those programs. *See Public Citizen v. U.S. Dep’t of Health & Hum. Servs.*, 66 F. Supp. 3d 196, 210 (D.D.C. 2014). There, the court held that such information contained significant “value to competitors,” as a “free roadmap” that, if released, “would allow competitors to avoid incurring the experiential or monitoring costs [the companies] did in gaining the information.” *Public*

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*Citizen*, 66 F. Supp. 3d at 210; *see also United States v. Twitter, Inc.*, No. 3:22-cv-03070-TSH (N.D. Cal. Nov. 16, 2023) (sealing portions of independent assessment report).

These principles apply with ample force to the materials at issue here. As set forth above and in the accompanying declarations, Meta has invested billions of dollars to develop its Privacy Program and devoted significant effort to evolving its Program over time. Public disclosure of the information here would result in clearly defined, serious injury to Meta. The Filings and Exhibits consist of detailed information about Meta's Privacy Program. Taken together, this information effectively constitutes a blueprint to Meta's Program. (Mehta Decl. ¶ 17.) As in *Public Citizens* and *100Reporters*, revealing the specific details about Meta's Privacy Program and how it has evolved that are set forth in the Filings and Exhibits would provide Meta's competitors a "free roadmap" that would allow them to avoid the costs that Meta incurred in connection with developing its Program over the course of multiple Assessments. Meta's competitors could "free ride" on Meta's investment by duplicating the structure and design of Meta's Privacy Program. (Mehta Decl. ¶ 18.) Bad actors could also seek to exploit that information by attempting to leverage the information in improper ways. (*Id.*)

In addition to providing the blueprints for Meta's Privacy Program, the Filings and Exhibits also include sensitive commercial information about Meta's technological capabilities and plans for future Program and product development. (Mehta Decl. ¶ 19.) As described above, the information at issue not only relates to Meta's Privacy Program, but also Meta's products much more broadly, insofar as it includes discussion and details that impact potential new products, features, and technology for both users and third parties across Meta's family of apps. While Meta's Privacy Program has evolved significantly since the 2021 Assessment Report, because compliance programs are inherently iterative, information reflecting Meta's

Privacy Program at different points in time is particularly valuable to a competitor because it would reveal a roadmap for Program maturation, as is information regarding how Meta's products, features, and technology have evolved over that period and will continue to evolve. Thus, the release of such information will "likely result in a clearly defined, serious injury" to Meta because it will allow Meta's competitors to improperly exploit confidential information regarding the design, structure, and evolution of Meta's Privacy Program, as well as information about Meta's plans and ongoing steps to develop new technology and implement new features, to their own advantage and at the expense of Meta.

Personally identifiable information ("PII") regarding non-executive Meta employees and passwords that Meta provided to the Commission in connection with the production of confidential materials to the Commission should also be protected under Commission precedent, which permits redaction of names and passwords. *See, e.g., In re Jerk, LLC*, No. 9361, 2015 FTC LEXIS 39, at \*9–10 (F.T.C. Feb. 23, 2015) (Chappell, J.) (permitting redaction of personally identifiable information, including names, where "[i]t does not appear that these individuals' personally identifying information has any bearing on either the allegations of the Complaint or the defenses of the Respondents"); *In re LabMD, Inc.*, No. 9357, 2014 FTC LEXIS 127, at \*1–3 (F.T.C. May 6, 2014) (Chappell, J.) (permitting redaction of "personal information" pertaining to a former employee); *In re LabMD, Inc.*, No. 9357, 2015 FTC LEXIS 59, at \*5–7 (F.T.C. Mar. 12, 2015) (Chappell, J.) (placing exhibits that contain passwords *in camera*).

Under Commission precedent, for information other than the PII and passwords, confidential or *in camera* for periods of five and ten years is warranted. *See, e.g., In re Altria Grp. Inc.*, No. 9393, 2021 WL 2258803, at \*5 (F.T.C. May 19, 2021) (Chappell, J.) (granting five-year *in camera* treatment to "documents . . . contain[ing] information on strategic



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initiatives”); *In re Impax Lab’ys, Inc.*, No. 9373, 2017 FTC LEXIS 122, at \*7–8 (F.T.C. Oct. 20, 2017) (Chappell, J.) (granting *in camera* treatment for a period of ten years for documents containing “highly confidential, competitively sensitive proprietary information, including . . . internal training and compliance information”); *In re McWane, Inc.*, No. 9351, 2012 FTC LEXIS 143, at \*21–23 (F.T.C. Aug. 17, 2012) (Chappell, J.) (granting *in camera* treatment for five years to material revealing “internal business strategies and principles and policies”); *In re ProMedica Health Sys.*, No. 9346, 2011 FTC LEXIS 101, at \*22–23 (F.T.C. May 25, 2011) (Chappell, J.) (granting *in camera* treatment for a period of five years for a document containing commercially sensitive business information); *In re Evanston Nw. Healthcare Corp.*, No. 9315, 2005 FTC LEXIS 56, at \*4–5 (F.T.C. Mar. 16, 2005) (granting *in camera* treatment for a period of ten years for documents containing sensitive business information). Permanent confidential or *in camera* treatment is warranted for PII and passwords. See *In re Jerk, LLC*, 2015 FTC LEXIS 39, at \*11; *LabMD*, 2014 FTC LEXIS 127, at \*3; *LabMD*, 2015 FTC LEXIS 59, at \*7.

Given that case law, Meta respectfully submits that under Rule 3.45(b), *in camera* treatment of all material it proposes to redact or withhold for a period of at least five years would be appropriate in this case and supported by Commission precedent; and for PII and passwords, permanent protection would be appropriate.

**PUBLIC****CONCLUSION**

In light of the foregoing, Meta respectfully submits that Meta's Filings and Exhibits should be accorded the same confidential or *in camera* treatment as the Commission's filings that relate to the same information, and thus that the Commission should permit (1) the proposed redactions of Meta's Filings and (2) withholding of Exhibits in their entirety to protect these documents and data from public disclosure.

Should the Commission determine that some or all of the material for which Meta requests confidential or *in camera* treatment must be disclosed, either now or at the conclusion of the period of confidential or *in camera* treatment, please contact Michael Scheinkman at 450 Lexington Avenue, New York, NY 10017; tel: (212) 450-4754; e-mail: michael.scheinkman@davispolk.com.

Dated: April 1, 2024

DAVIS POLK & WARDWELL LLP

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**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:** **Lina M. Khan, Chair**  
**Rebecca Kelly Slaughter**  
**Alvaro M. Bedoya**

*In the Matter of*

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*a corporation*

**Respondent.**

Docket No. C-4365

**[PROPOSED] ORDER GRANTING CONFIDENTIAL OR *IN CAMERA* TREATMENT**

Having considered Respondent Meta Platform, Inc.'s Motion for Confidential or *In Camera* Treatment, it is **HEREBY ORDERED** that the motion is **GRANTED**.

By the Commission.

**PUBLIC****CERTIFICATE OF SERVICE**

I hereby certify that on April 1, 2024, I caused a true and correct copy of the foregoing Motion for Confidential or *In Camera* Treatment, along with the Mehta Declaration, to be filed and served as follows:

One electronic copy via the encrypted FTP transmission system and one electronic courtesy copy to the Office of the Secretary via email to [ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov).

One electronic courtesy copy to the Office of the Administrative Law Judge via email to [OALJ@ftc.gov](mailto:OALJ@ftc.gov).

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*/s/ James P. Rouhandeh*

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**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Lina M. Khan, Chair**  
                                 **Rebecca Kelly Slaughter**  
                                 **Alvaro M. Bedoya**  
                                 **Melissa Holyoak**

*In the Matter of*

**FACEBOOK, Inc.,**  
*a corporation*

**Respondent.**

Docket No. C-4365

**DECLARATION OF NAZNEEN MEHTA**

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I, Nazneen Mehta, declare the following:

1. I joined Meta Platforms, Inc. (“Meta”) in 2018 and currently serve as Director and Associate General Counsel, Regulatory. In this role, I oversee a wide variety of regulatory and legal matters involving Meta.

2. I have personal knowledge of the facts set forth in this declaration, and, if called to testify, I could and would competently testify to them.

### **BACKGROUND**

3. Beginning on March 13, 2023, prior to filing the Order to Show Cause (“OTSC”) and Preliminary Findings of Fact (“PFOF”), the Federal Trade Commission (“Commission”) staff sought Meta’s review of over 60 potential exhibits, which together amounted to over 1,000 pages. These documents included materials previously provided to the Commission pursuant to relevant provisions of Attachment A of the Stipulated Order entered in *United States v. Facebook, Inc.*, No. 19-cv-02184 (D.D.C. Apr. 23, 2020) (Dkt. No. 35) (the “Order”) (the “Privacy Program Materials”). These documents also included materials previously provided to the Commission pursuant to: (1) two civil investigative demands (“CIDs”) requesting information regarding two 2019 technical errors involving the Messenger Kids product and (2) a demand letter issued pursuant to Part XV of the Order regarding a 2020 coding oversight relating to access to user data by third-party apps (collectively, the “Investigation Materials”).

4. The Privacy Program Materials included:

a. The report Meta’s independent Assessor (“Assessor”) produced following the initial Assessment of Meta’s Privacy Program (“2021 Assessment Report”), which contains over 200 pages detailing the design and operation of every aspect of Meta’s

Privacy Program, including a list and details regarding the entirety of the Safeguards comprising the Program;

b. Assessor workpapers discussing the Assessor’s preliminary analyses and providing additional details regarding Meta’s Privacy Program;

c. Meta’s hundreds of pages of narrative responses to the Commission’s letters seeking information pursuant to Part XV of the Order;

d. Transcripts of multiple depositions taken by the Commission pursuant to Part XV of the Order; and

e. underlying source material concerning these issues.

5. The Investigation Materials included:

a. Narrative responses and documents submitted pursuant to interrogatories and document requests contained in the Commission’s CIDs (for the Messenger Kids technical errors) and Part XV letters;

b. White Papers submitted to the Commission providing details regarding the issues underlying each investigation; and

c. A transcript of a 30(b)(6) investigational hearing conducted pursuant to Part XV of the Order.

6. The Commission staff requested that Meta identify information that would be protected from disclosure under the standard set forth in *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019)—i.e., information that is commercial in nature, “customarily and actually treated as private by its owner,” and was “provided to the government under an assurance of privacy.” *Id.*

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7. Meta reviewed the Privacy Program Materials and Investigation Materials and on March 30, 2023, and April 11, 2023, identified for the Commission the portions that Meta believed contained confidential, commercial information and personally identifiable information protected from disclosure (the “Protected Information”).

8. On May 3, 2023, the Commission filed the OTSC, with all information reflecting Protected Information redacted from the public record.

9. The same day, the Commission’s Office of the General Counsel provided Meta with a proposed public copy of the PFOF that redacted the majority of the Protected Information, citing Rule 4.9(c)(3) of the Commission’s Rules. In response, Meta identified several additional areas that also reflected Protected Information.

10. Subsequently, the Commission publicly filed the PFOF with all of the Protected Information redacted from the public record—both the portions the Commission initially identified and the portions Meta subsequently identified. The Commission withheld the exhibits cited in PFOF from the public docket.

**THE PROTECTED INFORMATION CONTAINS  
CONFIDENTIAL, COMMERCIAL INFORMATION**

11. Information revealing details regarding Meta’s Privacy Program, including the Protected Information, is commercial insofar as it is sensitive, proprietary business information that would provide competitors with a commercial advantage if disclosed.

12. Meta treats detailed information regarding its Privacy Program, such as the Protected Information, as confidential and does not release the information to its competitors or the public.

13. The Protected Information was provided under an assurance of privacy. Each time Meta provided the Commission with documents pursuant to the Order, it explicitly



requested confidential treatment of those documents and thus had the expectation that the Commission would keep the documents confidential.

14. In response, the Commission's actions made clear to Meta that it would treat the Protected Information as confidential. In 2021, the Commission released the 2021 Assessment Report with redactions to protect confidential, commercial information therein. Thereafter, on August 17, 2022, the Commission's Office of the General Counsel determined that material Meta provided to the Commission under the terms of the Order is completely protected from public release because it was provided pursuant to or in lieu of compulsory process.

#### **IMPORTANCE OF META'S PRIVACY PROGRAM**

15. By design, Meta's Privacy Program is integrated into Meta's business units and operations. Information reflecting the development and implementation of Meta's Privacy Program therefore reflects information about its business operations, interactions with users and business partners, and overall management. Protected Information includes not only information that relates to Meta's Privacy Program, but information that affects Meta's products much more broadly. Such information includes discussion and details that bear on potential new products, features, and technology for both users and third parties across Meta's family of apps.

16. Meta's Privacy Program and related compliance policies, processes, and tools are geared toward protecting the confidentiality and privacy of information provided by its users. In addition, the Privacy Program is designed to mitigate exposure to legal and regulatory risk for itself, its business partners, and its users. Meta's Privacy Program also helps it win and retain users and business partners.

17. Disclosure of the Protected Information at issue—which reflects proprietary information about Meta's Privacy Program and business operations—would cause Meta

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substantial competitive harm. The Protected Information contains extensive and nonpublic operational details of the components of Meta's Privacy Program, and, taken together, constitutes a blueprint for the current state of that Program and the ways in which it has evolved over time.

18. If the Protected Information were released, a competitor would receive a free roadmap and could copy Meta's Privacy Program in whole or in part and tailor the program to its particular business without the significant costs Meta incurred, and continues to incur, in creating and maturing its Program. In addition, bad actors could seek to take advantage of the Protected Information to identify and potentially attempt to exploit particular aspects of Meta's Privacy Program.

19. Moreover, the Protected Information also includes sensitive commercial information about Meta's technological capabilities and bears on plans for future product development. Release of this information would give Meta's competitors insights into Meta's product plans and strategies.

### **CONFIDENTIAL INFORMATION AT ISSUE**

#### **The Commission's Submissions**

20. The confidential information at issue consists almost entirely of the Protected Information the Commission has already redacted in its OTSC and PFOF. That information was drawn from exhibits attached to the PFOF, which were not published on the administrative docket.

21. As described above, those exhibits fall into six categories: (a) the 2021 Assessment Report; (b) Meta's responses to the Commission's letters seeking information pursuant to Part XV of the Order; (c) deposition transcripts related to testimony taken by the

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Commission during the Part XV inquiry; (d) various internal documentation that Meta produced to the Commission regarding its Privacy Program; (e) Assessor workpapers that include specific details regarding Meta's Privacy Program; and (f) Investigation Materials, including white papers, narrative responses and documents submitted pursuant to interrogatories and document requests contained in the Commission's CIDs and Part XV demand letter related to the 2019 technical errors involving the Messenger Kids product and a 2020 coding oversight, and a transcript of an investigational hearing related to that 2020 coding oversight.

22. These materials were properly withheld, and details regarding the content therein that was included in the OTSC and the PFOF properly redacted, because they reflect extensive, probing reviews and descriptions of Meta's confidential business systems and proprietary compliance policies, practices, and tools—i.e., its Privacy Program. Further, they describe the Assessor's methodology in conducting the review of Meta's Privacy Program, provide the Assessor's evaluation of Meta's Privacy Program in design and in application, detail the Assessor's recommendations for improvement, and describe enhancements undertaken by Meta to address those recommendations. They also describe Meta's plans and ongoing steps to develop new technology and implement new features to continue to mature its Program and to improve its products and services for its users and third parties. Finally, they contain personally identifiable information regarding non-executive Meta employees and passwords that Meta provided to the Commission.

### **Meta's Submissions**

23. Meta is introducing four additional Privacy Program documents into the record: (a) the transmittal letter that accompanied Meta's submission of the 2021 Assessment Report; (b) a presentation entitled "2023 Assessment Status & Report Update" that the Assessor provided to

Commission staff on May 3, 2023; (c) the transmittal letter that accompanied Meta’s submission of the first biennial Assessment (the “2023 Assessment Report”); and (d) the 2023 Assessment Report (together, the “Supplemental Privacy Program Documents”).

24. Like the Protected Information already withheld by the Commission, the Supplemental Privacy Program Documents also reflect extensive and detailed confidential information regarding Meta’s Privacy Program. In particular, all of the Supplemental Privacy Program Documents now being introduced by Meta include analogous information to the information contained in the 2021 Assessment Report and other documents describing its findings—i.e., they reflect extensive, probing reviews and descriptions of Meta’s confidential business systems and proprietary compliance policies, practices, and tools, and they also describe the Assessor’s methodology in conducting the review of Meta’s Privacy Program, provide the Assessor’s evaluation of Meta’s Privacy Program in design and in application, detail the Assessor’s recommendations for improvement, and describe enhancements undertaken by Meta to address those recommendations.

25. And also like materials already withheld by the Commission, release of these materials would cause Meta considerable competitive harm. The materials would provide competitors with a roadmap of Meta’s systems and allow those competitors to make affirmative use of Meta’s Privacy Program and information derived from the Privacy Program without incurring the substantial investment cost Meta has incurred in developing and continually refining its compliance program. Likewise, release of the information may allow competitors and counterparties to identify and seek to exploit particular aspects of Meta’s Privacy Program and, as a result, could make it more difficult for Meta to detect privacy or other compliance violations.

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26. Meta is separately introducing nine additional documents related to the Commission's investigations into the 2019 Messenger Kids technical errors and the 2020 coding oversight: (a) the Commission's two CIDs issued in the Messenger Kids matter; (b) Meta's July 29, 2020 and August 5, 2020 letters to the Commission, responding to the June 30, 2020 demand letter issued pursuant to Part XV of the Order requesting information related to the 2020 coding oversight; (c) an August 31, 2020 letter from Meta to the Commission transmitting document productions related to the Messenger Kids technical errors; (d) an April 6, 2021 letter from Meta to the Commission providing additional information related to the relationship between Messenger Kids and Messenger code; (e) a May 28, 2021 letter from the Commission to Meta requesting information related to employees who had responsibility over issues related to the Messenger Kids technical errors and the coding oversight; (f) Meta's June 11, 2021 letter responding to the Commission's May 28, 2021 request; and (g) the transcript of the investigational hearing for Hady Abou El-Kheir related to the Messenger Kids technical errors, conducted on October 14, 2021 (together, the "Supplemental Investigation Documents").

27. The Supplemental Investigation Documents contain personally identifiable information related to non-executive Meta employees and other confidential information (i.e., passwords for accessing documents produced to the Commission), which Meta has withheld consistent with the redactions of Protected Information in the OTSC and PFOF filed by the Commission. They also contain non-public information related to the number and type of employees allocated to specific Meta projects, as well as discussion of product source code.

28. Meta is also filing a number of other documents with the Commission, including (a) a brief in response to the OTSC; (b) a response to the PFOF; (c) a declaration from Michel Protti, Chief Privacy Officer, Product and the Designated Compliance Officer at Meta ("Protti

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Declaration”); (d) the expert report of Larry D. Thompson, Counsel, Finch McCranie LLP; (e) the expert report of Eugene F. Soltes, McLean Family Professor of Business Administration at Harvard Business School; and (f) the expert report of David Martens, Principal, Intuity Consultants, Inc. (together, “Filings”).

29. To the extent Meta’s Filings include Protected Information, as reflected in the Commission’s own filings, or analogous confidential, commercially sensitive information drawn from the Supplemental Documents or the Protti Declaration, Meta has redacted that information. Meta’s redactions conform to and are consistent with the redactions of Protected Information in the OTSC and the PFOF filed by the Commission. For the reasons described herein, public disclosure of the redacted information would cause substantial injury to Meta’s business and commercial interests.

30. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: April 1, 2024

/s/ Nazneen Mehta

Nazneen Mehta