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

RESPONSE OF META PLATFORMS, INC. (F/K/A FACEBOOK, INC.) TO THE COMMISSION'S PRELIMINARY FINDINGS OF FACT

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
212) 450-4000

Counsel for Respondent Meta Platforms, Inc.

TABLE OF CONTENTS

PAGE

INTRODUCTION 1

I. META'S PRIVACY PROGRAM 2

A. Meta Implemented and Maintained a Comprehensive, Effective Privacy Program that More than Satisfies Part VII 2

1. Meta Committed Intensive Resources to Design a Brand-New, Comprehensive Privacy Program that Exceeds the Requirements of Part VII 3

2. Meta Embraced the Independent Assessor's Early Feedback 9

3. The Initial Assessment Findings Affirm that Meta Established a Comprehensive, Effective Privacy Program, and Have Already Been Addressed 11

4. Meta Addressed All of the Independent Assessor's 2021 Findings as Part of Its Commitment to Continuous Improvement 14

5. The 2023 Assessment Report Affirms the Original Design of the Privacy Program and Its Continued Growth and Maturation 15

6. Meta More Than Satisfied Every Requirement in Part VII of the Order 17

(a) Meta Fully Satisfied the Requirements of Parts VII.A, VII.B, and VII.C of the Order 18

(b) Meta's Privacy Risk Assessment Process Fully Complies with the Requirements of Part VII.D of the Order, is Effective, and is Continuously Improving 18

(c) Meta Designed, Implemented, and Maintains Safeguards that Exceed the Requirements of Part VII.E of the Order, are Effective, and are Continuously Improving 22

(d) Meta's Third Party Risk Management Program Exceeds the Requirements of Part VII.E.1 of the Order, is Effective, and Is Continuously Improving 23

(e) Meta's Privacy Review Program Exceeds the Requirements of Part VII.E.2 of the Order, is Effective, and is Continuously Improving 28

(f) Meta's Security for Privacy Program Exceeds the Requirements of Part VII.E.3, is Effective, and is Continuously Improving 39

(g) Meta's Affiliate-Sharing Controls Exceed the Requirements of Part VII.E.4 of the Order, are Effective, and are Continuously Improving 43

(h) Meta's Controls for Facial Recognition Templates, Which It No Longer Uses, Fully Satisfy Part VII.E.5 of the Order 47

(i) Meta's Safeguard Effectiveness Testing Processes Exceed the Requirements of Part VII.F of the Order, are Effective, and are Continuously Improving 47

(j) Meta's Training Programs Exceed the Requirements of Part VII.G of the Order, are Effective, and are Continuously Improving 51

(k) Meta's Service-Provider Safeguards within the TPRM Control Domain Exceed the Requirements of Part VII.H of the Order, are Effective, and are Continuously Improving 54

(l) Meta's Governance Domain Exceeds the Requirements of Parts VII.I and VII.J of the Order, is Effective, and is Continuously Improving 56

(m Meta Exceeded the Requirements of Part VII of the Order in Establishing a Data Life Cycle Management Domain, which is Effective and Continuously Improving 59

(n) Meta Exceeded the Requirements of Part VII of the Order in Establishing an Incident Management Domain, which is Effective and Continuously Improving 62

(o) Meta Exceeded the Requirements of Part VII of the Order in Establishing a Complaints and Issue Management domain, which is Effective and Continuously Improving 67

(p) Meta Exceeded the Requirements of Part VII of the Order in Establishing a Transparency, Notice and Choice Control Domain, which is Effective and Continuously Improving 70

(q) Meta Exceeded the Requirements of Part VII of the Order in Establishing an Internal Policies and Procedures Control Domain, which is Effective and Continuously Improving 73

II. 90-DAY LIMITATION FOR THIRD-PARTY APPS 76

A. Meta Discovered, Disclosed, and Remediated the Expiration Check Coding Oversight 76

1. Meta's Facebook Login and Third-Party Apps 77

2. Meta Announces Plans for the 90-Day Limitation 80
3. Meta Develops and Launches the 90-Day Limitation Functionality 82
4. Meta's 90-Day Limitation Functionality 85
5. Meta Promptly Investigates and Remediates the Coding Oversight 88
6. Meta Voluntarily Discloses the Coding Oversight and Cooperates with the Commission 92

III. MESSENGER KIDS 94

A. Meta Discovered, Disclosed, and Remediated Messenger Kids Technical Errors 94
1. Meta's Messenger Kids App 94
2. Meta Obtains Verifiable Parental Consent from Parents of Messenger Kids Users 95
3. Meta Develops Messenger Kids 97
4. Pre-Launch Testing of Messenger Kids 100
5. Meta Promptly Detects, Investigates, and Remediates the Group Chat Technical Error 102
6. Meta Promptly Detects, Investigates, and Remediates the Video Call Technical Error 105
7. Meta Undertakes Supplemental Mitigation and Enhancement Measures 109
8. Meta Voluntarily Disclosed the Technical Errors and Cooperates with the Commission's Inquiry 112

IV. THE COMMISSION'S PRELIMINARY FINDINGS OF FACT ARE INACCURATE AND DO NOT SUPPORT A FINDING THAT META DID NOT MEET PART VII'S REQUIREMENTS 114

A. Overview of Privacy Program & Assessment (¶¶ 1–29) 114
B. Risk Assessments (¶¶ 30–170) 145
C. Privacy Review (¶¶ 171–370) 189
D. Third Party Risk Management (¶¶ 371–573) 280
E. Incident Management (¶¶ 574–98) 398
F. Data Life Cycle Management (¶¶ 599–707) 414
G. Security for Privacy (¶¶ 708–58) 457
H. Training, Awareness & Communications (¶¶ 759–869) 474

I. Transparency, Notice and Choice (¶¶ 870–96) 516

J. CMER (¶¶ 897–948) 538

K. IPP (¶¶ 949–78) 552

L. Complaints & Issue Management (¶¶ 979–1028) 608

M. Governance (¶¶ 1029–66) 622

V. THE COMMISSION'S PRELIMINARY FINDINGS OF FACT ARE INACCURATE AND DO NOT SUPPORT A FINDING THAT META VIOLATED ANY ORDER, STATUTE, OR REGULATION AS A RESULT OF THE EXPIRATION CHECK CODING OVERSIGHT 632

A. Expired Apps (¶¶ 1067–136) 632

VI. THE COMMISSION'S PRELIMINARY FINDINGS OF FACT ARE INACCURATE AND DO NOT SUPPORT A FINDING THAT META VIOLATED ANY ORDER, STATUTE, OR REGULATION AS A RESULT OF THE MESSENGER KIDS TECHNICAL ERRORS 653

A. Messenger Kids (¶¶ 1137–64) 653

INTRODUCTION

1. Below is set forth Meta's Response to the Commission's Preliminary Findings of Fact ("PFOF").

2. Sections I through III set forth facts from the record evidencing conclusively that Meta established, implemented, and maintains a comprehensive Privacy Program that more than satisfies Part VII of the Order[1] ("2020 Order" or "Order"), as well as how Meta discovered, disclosed, and remediated a coding oversight involving the 90-Day Limitation feature on Facebook and two technical errors involving Messenger Kids.

3. Sections IV through VI respond on a point-by-point basis to the 1,164 paragraphs of the Commission's PFOF, citing inaccuracies in the Commission's PFOF to the extent that it misstates or omits well-documented facts regarding Meta's Privacy Program, the requirements of the Order, the meaning of Assessor-identified gaps, and the maturation and growth in the Privacy Program's safeguards since inception, as well as the circumstances under which the 90-Day Limitation coding oversight and the Messenger Kids technical errors were identified, remediated, and disclosed.

4. Section IV also demonstrates how the Commission's PFOF does not show that Meta failed to comply with Part VII of the Order, omits the many instances where the Privacy Program goes beyond the requirements of Part VII of the Order, and not once identifies any harm to consumers. Sections V and VI similarly make clear that the PFOF omits facts known to the Commission that contradict the Commission's proposed findings that Meta did not meet the

[1] Capitalized terms not defined herein have the same meaning ascribed to them in Meta's accompanying "Response to Order to Show Cause Why the Commission Should Not Modify the Order and Enter the Proposed New Order," unless otherwise noted.

requirements set forth in Part I of the 2012 Order or Part I of the 2020 Order, and that Meta violated Section 5 of the FTC Act and the Children's Online Privacy Act.

I. META'S PRIVACY PROGRAM

A. Meta Implemented and Maintained a Comprehensive, Effective Privacy Program that More than Satisfies Part VII

5. Meta has designed and implemented an expansive Privacy Program that operates at an unprecedented scale, exceeding the requirement to implement "a comprehensive privacy program . . . that protects the privacy, confidentiality and Integrity of the Covered Information"[2] and going beyond the specific requirements of Parts VII.A–J of the Order. The breadth and depth of Meta's Program results from extensive investments initiated before the Order was even announced and supported at the highest levels of Meta's leadership. Undertaking a foundational redesign anchored to privacy and compliance best practices, Meta launched a brand-new Privacy Program that not only satisfied its Order obligations, but operated more broadly to safeguard privacy across Meta. The results of the independent Assessor's testing affirm that Meta met each obligation under Part VII (and then some). And Meta embraced the Assessor's testing—which began the very day the Program launched—to help its new Program mature as part of Meta's commitment to continuous improvement. The result is an ever stronger Program that continues to build on the foundations Meta established in 2020 and which unquestionably meets—and surpasses—Meta's Order obligations.

[2] Order, Part VII.

1. Meta Committed Intensive Resources to Design a Brand-New, Comprehensive Privacy Program that Exceeds the Requirements of Part VII

6. The 2020 Order was a watershed moment for Meta that resulted in profound changes across the Company. Starting even before the Order was announced, Meta immediately began laying the groundwork for what would become a comprehensive Privacy Program of unprecedented scope and scale, drawing on support and leadership at the highest levels of the Company. Meta's Chief Executive Officer, Mark Zuckerberg, sponsored extensive investments in resources, personnel, and tools to embed privacy into the Company's operation and culture. In May 2019, Mr. Zuckerberg helped recruit senior leaders from Meta's product, engineering, and infrastructure organizations to launch Meta's Order compliance efforts.[3] These included Michel Protti, a then-Vice President leading Product Marketing for Partnerships, who brought both product and operations expertise to his dual role as Meta's Chief Privacy Officer, Product and Designated Compliance Officer. Under Mr. Protti's leadership, Meta established and grew the Privacy Organization (now called the Privacy and Data Practices Organization, "PDP"), which was charged with implementing and operating the Privacy Program. PDP members include senior executives appointed from Meta's product groups, engineers and other technical experts, and numerous personnel recruited from peer companies with expertise in privacy, risk, compliance, and technology. Meta also instituted new governance and accountability measures, creating a dedicated independent Committee of its Board of Directors, the Privacy Committee, to oversee Meta's Order compliance efforts and the Privacy Program.[4]

[3] Ex. 14 (Jan. 11, 2022 resp. to Oct. 14, 2021 requests 1–3) at 4.

[4] *Id.* at 5.

7. Meta made the foundational decision to embark on a complete redesign and rebuild of its prior privacy compliance program. This challenge meant a more ambitious and difficult course in the short term that would yield greater dividends for Meta and its users in the form of stronger long-term privacy practices and protections. As the independent Assessor recognized, "rather than meeting the basic requirements of the Order by incrementally improving existing Safeguards, Meta's leadership instead took a *more comprehensive* and time-intensive approach by redesigning the program and the associated Safeguards from the ground up."[5] And as Meta forecast in its own 90-page Part XIII Compliance Report, submitted to the Commission on the same day the Program launched, [redacted][6] Meta's decision to completely reinvent its Privacy Program, though far more time-consuming, allowed it to deploy best practices in privacy and compliance issued by leading standard-setting organizations, to consult with independent, third-party experts as well as experienced compliance professionals, and to extend beyond the specific requirements set forth in Parts VII.A–J.

8. In designing its new Program, Meta incorporated guidance from leading privacy and standard-setting organizations, such as [redacted] Meta also consulted [redacted] with independent, third-party experts regarding Program design and foundational privacy principles.[7] [redacted]

[5] Ex. D (2023 Assessment Report) at 6 (emphasis added).

[6] Ex. 11 (Oct. 24, 2020 Compliance Report) at 2.

[7] *Id.* at 12–13.

[redacted] [8] Among other things, Meta adopted [redacted]—all in addition to the rigorous and continuous testing undertaken by the Assessor.[9]

9. The result of these efforts was a Privacy Program that not only satisfied Part VII, but expanded beyond the four corners of the Order to address privacy risks and privacy interests in ways not contemplated by the Order. The Privacy Program performs at an unprecedented scale, operating [redacted] of safeguards[10] across dozens of business units.[11] As of the conclusion of the most recent Assessment, it directly touched over [redacted] Meta personnel[12] through training, company-wide risk assessments, product-focused risk assessment and mitigation, and other measures that reinforce the importance of privacy [redacted]. The Program operates across all of Meta's major products and services, including Facebook, Instagram, WhatsApp, Messenger, Oculus, and Horizon, applying both common controls as well as product-specific safeguards to address unique privacy risks.[13]

[8] *Id.* at 14.

[9] Ex. A (Letter from M. Protti to Federal Trade Commission (July 1, 2021)) at 4; M. Protti Decl. ¶ 6.

[10] *See* Ex. 4 (2021 Assessment Report) at 2.

[11] Ex. 49 (PRA 1.0 Report) at 3.

[12] *See, e.g.*, Ex. D (2023 Assessment Report) at 42.

[13] Consistent with the definition of "Respondent" for Parts VII–VIII and requirements with respect to "Facebook-owned affiliates," certain discrete products (primarily acquisitions) sit outside of the Privacy Program. *See* Order, Definition Q. Meta applies specific processes to its sharing with Facebook-owned affiliates, consistent with Part VII and as discussed further below in relation to Part VII.E.4.

At base, the Privacy Program reflects nearly an [redacted] expansion from the program Meta operated prior to the 2020 Order.[14]

10. The Privacy Program's framework is organized around [redacted] that collectively account for the core elements of an effective and comprehensive privacy compliance program tailored to Meta's operations.[15] It is supervised at the highest levels of the Company and continuously evolves in response to internal and external assessments. The Program is overseen at the Board level by the independent Privacy Committee, and at the program level by the Chief Privacy Officer, Product, who operates a formal governance body made up of PDP and Legal leadership.[16] The Program assesses and addresses privacy risk at multiple levels, from company-wide risk assessments to analysis of product-level changes to identify privacy-forward solutions. It encompasses numerous technical controls covering Meta's data systems and management practices, as well as functions dedicated to detecting and remediating privacy incidents. Meta internally reinforces the Privacy Program and a privacy-conscious culture across its workforce with extensive training and explicit focus on appropriate policies, procedures, and documentation, alongside processes to ensure outward-facing transparency for Meta's users. To hold itself accountable, Meta deploys complementary processes to test and evaluate Program functions and make corresponding enhancements, in addition to expansive monitoring and enforcement processes applied to third-party developers.

11. As discussed in greater detail in Paragraphs 26 through 94, *infra*, Meta has gone beyond the requirements of Parts VII.A–J of the Order, instituting processes that not only satisfy

[14] *See* Ex. A (Letter from M. Protti to Federal Trade Commission (July 1, 2021)) at 4 (comparing number of safeguards in Meta's pre-2020 privacy program to the comprehensive Privacy Program in 2021).

[15] Ex. 11 (Oct. 24, 2020 Compliance Report) at 12.

[16] Ex. D (2023 Assessment Report) at 30.

each Order subpart but serve to address privacy risk more broadly, regardless of whether specifically required under Part VII. For example, [redacted], Meta operates numerous processes that are nowhere mentioned in Part VII, including—among others—[redacted] [17]

12. The breadth and depth of the Program are also reflected in the "extensive investments" Meta has made in the Privacy Program and related initiatives, as noted by the Assessor.[18] Since establishing PDP in 2019, Meta has continuously scaled its privacy resources, growing PDP from a few hundred employees at the end of 2019, to over [redacted] at the conclusion of the 2023 Assessment.[19] In parallel, Meta had expanded its broader product, engineering and operational teams focused on privacy to over [redacted] employees by the conclusion of the 2023 Assessment,[20] and the numbers have only continued to grow, reaching 3,000 as of the end of 2023.[21] Between 2019 and 2023, Meta spent $5.5 *billion* on the Privacy Program and related privacy initiatives.[22]

13. In executing its expansive approach to Order compliance and the Program more generally, Meta has chosen to apply its Program to personnel, systems, and risks not referenced

[17] *See generally* Ex. 4 (2021 Assessment Report).

[18] *Id.* at 3.

[19] *Id.* at 2; Ex. D (2023 Assessment Report) at 7.

[20] Ex. D (2023 Assessment Report) at 7.

[21] Meta, *Privacy Progress Update*, https://about.meta.com/privacy-progress/ (last visited March 14, 2024).

[22] *Id.*; M. Protti Decl. ¶ 5.

in Part VII or its subparts. For example, while Part VII.E requires Meta to implement safeguards only for *material* risks identified in its privacy risk assessment, Meta went beyond that requirement, implementing safeguards to address risks without regard to materiality.[23] While Part VII.G requires Meta to establish privacy training programs for employees, Meta has applied these programs to *all* Meta personnel, including vendors.[24] And even though Part VII.E.3 requires employee access controls only for Meta's Data Warehouse, Meta also [redacted][25] Further, many of Meta's Program functions were designed to have [redacted] [26] In short, Meta went above and beyond Part VII in designing and operating its Privacy Program.

14. The breadth of Meta's Program lays bare the fundamental problem with the Commission's approach in its Order to Show Cause ("OTSC"). Rather than allege any specific failure of Meta to comply with an Order provision, the Commission relies on the "sheer number of total gaps and weaknesses" to support its request to reopen the matter.[27] Yet the number of gaps has no bearing on Meta's Part VII compliance. Meta could have strategically minimized the number of gaps and weaknesses by restricting its Program to the four corners of Part VII, but it did not. Indeed, if Meta's Program were even broader and more expansive than it is now, going even further beyond the requirements of the Order, inevitably there would be more gaps

[23] *See, e.g.*, Ex. D (2023 Assessment Report) at 16.

[24] *See* Ex. 4 (2021 Assessment Report) at 26–27.

[25] *See id.* at 116.

[26] *See, e.g.*, *id.* at 73.

[27] *See* OTSC at 4.

and more weaknesses. But these hypothetical gaps and weaknesses—like those cited by the Commission—would be entirely unrelated to the core requirements of Part VII, which have been fully met, as set forth below.

2. Meta Embraced the Independent Assessor's Early Feedback

15. In parallel with designing a brand-new Privacy Program, Meta embraced the opportunity for early, independent feedback from its third-party independent Assessor. While building its Program, Meta launched an [redacted][28] Meta [redacted], and ultimately presented the independent Assessor candidate—Protiviti—to the Privacy Committee, the FTC, and the Department of Justice for approval shortly after the Order became effective in April 2020.[29]

16. Starting almost immediately after the Assessor was approved, [redacted][30] These steps laid the groundwork for the "extensive access" to employees, documents, and information that Meta provided throughout the Assessment, as recognized in the Initial Assessment Report—i.e., the report produced by the independent Assessor covering the Privacy Program's first six

[28] Ex. A (Letter from M. Protti to Federal Trade Commission (July 1, 2021 at 2.

[29] *Id.*

[30] *See id.*

months.[31] This access included active engagement at all levels of Meta leadership, including multiple formal and informal touchpoints with the Privacy Committee and its Chair, [redacted], and more than [redacted] meetings with Privacy Program leadership.[32]

17. Meta opened itself to intensive external testing from the Assessor starting the very same day the Program launched, [redacted].[33] As the Assessor noted in its Initial Assessment Report, [redacted]"[34] The Assessor undertook rigorous testing of both design and operating effectiveness across Meta's safeguards in the first months of the Privacy Program's operation.[35] The six-month Initial Assessment involved over [redacted] auditors spending over [redacted] hours scrutinizing the Privacy Program,[36] nearly a [redacted] increase in hours compared to a *two-year* assessment of Meta's prior program.[37] This intensive examination involved over [redacted] meetings and walk-throughs, over [redacted] completed requests for documents and information, and over [redacted] compliance-related documents reviewed.[38] Meta

[31] *See* Ex. 4 (2021 Assessment Report) at 2.

[32] *See* Ex. A (Letter from M. Protti to Federal Trade Commission (July 1, 2021)) at 2; Ex. 14 (Jan. 11, 2022 resp. to Oct. 14, 2021 requests 1–3) at 5.

[33] *See* Ex. A (Letter from M. Protti to Federal Trade Commission (July 1, 2021)) at 2.

[34] *See* Ex. 4 (2021 Assessment Report) at 2.

[35] *See generally id.* at 7–14 (Methodology .

[36] *See id.* at 1.

[37] *See* Ex. A (Letter from M. Protti to Federal Trade Commission (July 1, 2021)) at 3 n.4 (noting that the biennial Assessment conducted by PricewaterhouseCoopers for 2015–2017 entailed [redacted] auditors and [redacted] total audit hours).

[38] *Id.* at 3.

embraced the Assessment, prompting the Assessor to recognize "the extensive . . . cooperation provided by [Meta] leadership throughout our Assessment."[39]

18. Meta and the Assessor also kept the Commission regularly apprised of Meta's Privacy Program and the Assessment over the course of the Initial Assessment. In addition to the numerous meetings Meta unilaterally held with the Commission regarding its Order implementation and Privacy Program efforts (over ten starting in October 2019), Meta and the Assessor jointly met with Commission staff nearly monthly starting in September 2020—before the Assessment began—to ensure transparency for the Commission into Meta's Privacy Program, the Assessor's testing plans and progress, and the Assessor's findings.[40]

3. The Initial Assessment Findings Affirm that Meta Established a Comprehensive, Effective Privacy Program, and Have Already Been Addressed

19. The Assessor's intensive testing in the first months of the Program's operation culminated in an exhaustive, 240-page report—the Initial Assessment Report—that confirmed that Meta had done what it set out to do—it had designed and implemented a comprehensive, effective Privacy Program that protects the privacy, confidentiality, and Integrity of Covered Information, satisfying all of the required elements of Part VII (and then some). The Assessor specifically concluded that "[w]e believe the overall scope of the program and structure of the [redacted] into which the program is organized is logical and appropriately comprehensive. As a result, the key foundational elements necessary for an effective program are now in place . . . ."[41] The Assessor also praised the "extensive investments" and "meaningful progress"

[39] Ex. 4 (2021 Assessment Report) at 2.

[40] M. Protti Decl. ¶ 8.

[41] Ex. 4 (2021 Assessment Report) at 3.

Meta had made, citing—among other things—that Meta had "established dedicated privacy oversight and governance functions," redesigned the Privacy Program "based on input from multiple outside experts," grown PDP to more than [redacted] employees, and created a "dedicated Privacy Review function staffed by more than [redacted] privacy subject-matter specialists and supporting technology infrastructure."[42]

20. The Initial Assessment Report also affirms that Meta satisfied the requirements of Parts VII.A–J of the Order. Indeed, the Assessor identified no breach of Part VII in its Initial Assessment Report, nor does the OTSC allege that it did. Rather, consistent with its mandate under Part VIII to identify "gaps and weaknesses,"[43] the Assessor cataloged any time it identified an exception from Meta's policies and procedures, an opportunity to improve Meta's Privacy Program processes, or even where the Assessor forecast a need for improvements to processes not yet required under the Order (e.g., certain annual processes). Indeed, the Assessor's Methodology section underscores that its yardstick was not simply Part VII, but a broader Assessment "framework" incorporating privacy compliance best practices from third-party standard-setting organizations, "as well as our collective professional experience on privacy program standards, and tailored . . . to [Meta's] unique size and complexity."[44] Despite this high bar, the vast majority of Meta's safeguards—nearly [redacted]—passed multiple rounds of design and operating effectiveness testing with *no* gaps.[45] And as the Assessor has said—including in a

[42] *Id.* at 2–3.

[43] *See* Order, Part VIII.D.

[44] *See* Ex. 4 (2021 Assessment Report) at 10.

[45] Ex. B (May 3, 2023 Assessor Presentation to FTC) at 3.

presentation made to the staff on the day the Commission filed the OTSC—gaps are "to be expected, even in areas of significant progress and maturity."[46]

21. Indeed, the nature of the identified gaps only underscores the breadth and efficacy of Meta's Privacy Program. [redacted] of the gaps related solely to inconsistencies in documentation that is not required by the Order and did not undermine Safeguard effectiveness, either in design or operation.[47] Many of the rest concerned gaps that were not only negligible, but represented exceptions from policies and procedures Meta voluntarily adopted—for example, that Meta *only* met its *self-imposed* deadline of [redacted] incidents [redacted] of the time,[48] or that *only* [redacted] of Meta personnel had completed Meta's privacy training[49]—many of whom were vendors without access to Covered Information and whom Meta voluntarily subjected to training.[50] And numerous others related to gaps in functions that Meta had established as part of its broad approach to compliance, but that are nowhere mentioned in Part VII, such as gaps arising under Meta's Complaints and Issue Management or Incident Management domains.[51] When viewed in the larger context of the Initial Assessment Report—which extensively described the Program's design, functions, and layers of controls that Meta implemented as part of its extensive Program—it is clear that the Assessor-identified gaps impacted only a small fraction of the overall Program's design or operation. And perhaps most significantly, nowhere does the Commission or Initial Assessment Report identify any harm to consumers arising from those gaps. A fuller discussion of the gaps cited in the OTSC is set forth

[46] Ex. D (2023 Assessment Report) at 348; Ex. B (May 3, 2023 Assessor Presentation to FTC) at 6.

[47] Ex. A (Letter from M. Protti to Federal Trade Commission (July 1, 2021 at 4.

[48] *See infra* Section I.A.6.n ¶¶ 77–78.

[49] *See infra* Section I.A.6.j ¶¶ 62–63.

[50] *See, e.g.*, Ex. 4 (2021 Assessment Report) at 29, 112.

[51] *See, e.g.*, *infra* Section IV.E, Resp. to PFOF ¶¶ 574–98; *infra* Section IV.L, Resp. to PFOF ¶¶ 979–1028.

in Paragraphs 26 through 94, *infra.* In short, the Initial Assessment Report only affirms Meta's compliance with Part VII.

4. Meta Addressed All of the Independent Assessor's 2021 Findings as Part of Its Commitment to Continuous Improvement

22. Even though the Initial Assessment Report validated Meta's compliance with Part VII, Meta nonetheless addressed every piece of Assessor feedback as part of its broader Program maturation efforts. Consistent with compliance best practices and its commitment to continuous improvement—one of the hallmarks of an effective compliance program[52]—Meta undertook intensive efforts to address every single gap. As the Assessor recognized, Meta executed these efforts in parallel with "new voluntary or discretionary activities driven by management decisions to improve the program" as well as overarching actions dedicated to addressing common themes underlying the 2021 findings.[53] To address each finding—and again beyond Order requirements—Meta designed and implemented an end-to-end remediation process to develop management action plans ("MAPs"), obtain Assessor feedback on those plans, implement them, and submit them to the Assessor for validation and re-testing of the relevant safeguards. By the time the Assessor finalized its 2023 Assessment Report, Meta had implemented over [redacted] MAPs,[54] consisting of approximately [redacted] individual milestones, to address findings from the initial and first biennial Assessment periods.[55] Meta has continued to prioritize remediation, and those figures now sit at over [redacted] MAPs implemented,

[52] *See, e.g.*, Dep't of Justice, "Evaluation of Corporate Compliance Programs" (Mar. 2023), at 15, *available at* https://www.justice.gov/criminal-fraud/page/file/937501/download (last visited Mar. 14, 2024) ("One hallmark of an effective compliance program is its capacity to improve and evolve . . . . In evaluating whether a particular compliance program works in practice, [regulators] should consider revisions to corporate compliance programs in light of lessons learned.") (internal citations and quotations omitted).

[53] *See* Ex. D (2023 Assessment Report) at 7.

[54] *Id.* at 6.

[55] *See* Ex. C (Letter from M. Protti to Federal Trade Commission (June 30, 2023)) at 2.

consisting of over [redacted] individual milestones.[56] The Assessor confirmed that over [redacted] of the [redacted] MAPs addressing and remediating the initial Assessment findings were implemented as of June 2023,[57] and Meta has since implemented the remainder of those MAPs and addressed and remediated the related findings to the Assessor's satisfaction.[58] The MAPs also remain subject to ongoing testing.[59] The efforts Meta undertook and the results it achieved in each control domain are discussed in greater depth in Paragraphs 26 through 94, *infra*, as well as in the point-by-point response to each paragraph of the Commission's Preliminary Findings of Fact in Section IV.

5. The 2023 Assessment Report Affirms the Original Design of the Privacy Program and Its Continued Growth and Maturation

23. The 2023 Assessment Report, which represents the culmination of two additional, intensive years of testing, both reaffirms the Privacy Program's original design and recognizes its maturation since the Initial Assessment Report. The Assessor concluded that "Meta made significant strides in improving the [Privacy Program] over the two-year period," and that "the effectiveness and maturity of the control environment has notably improved based on our Assessment results reported herein."[60] In particular, the Assessor "noted improvement in the maturity of the program across all [redacted]," specially lauding Meta's "holistic and strategic approach to address the root cause of the previously identified issues" in "the most critical Domains in terms of risks to user privacy."[61]

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[56] M. Protti Decl. ¶ 12.

[57] Ex. C (Letter from M. Protti to Federal Trade Commission (June 30, 2023)) at 2.

[58] M. Protti Decl. ¶ 12.

[59] *Id*.

[60] Ex. D (2023 Assessment Report) at 7, 348.

[61] *Id.* at 8, 9.

24. The Assessor also recognized Meta's continued commitment to the Program and Assessment at all levels, noting that "Meta has continued to make significant investments in the [Privacy Program],"[62] citing, among other things, Program improvements driven both by Meta's efforts to address the Assessor's findings as well as Meta's self-initiated efforts;[63] that "Meta has continued to push a privacy-first message from the top of company leadership";[64] Meta's continued increase in resources, growing PDP from [redacted] employees to over [redacted] by the time of the 2023 Assessment Report;[65] significant investment in tooling and automation;[66] and new roles that "[redacted]"[67]

25. The Assessor also again "acknowledge[d] and appreciate[d] the extensive access to, and cooperation provided by Meta leadership throughout [the] Assessment," as well as the additional "processes, procedures, and information flows" Meta established "to further aid the breadth and depth of our testing."[68] The Assessor further cited "frequent[]" meetings with Meta's Chief Privacy Officer, Product, and other Privacy Program leaders, as well as numerous touchpoints with Meta's Privacy Committee that exceeded Order requirements, further facilitating the Assessor's testing.[69] Meta's commitment to the assessment process enabled the Assessor to conduct even "more detailed and substantive testing," which entailed over [redacted]

[62] *Id.* at 7.

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *Id.* at 8

[67] *Id.* at 7.

[68] *Id.* at 6.

[69] *See id.*

Protiviti auditors spending over [redacted] audit hours evaluating the Program, including reviewing over [redacted] documents in response to [redacted] audit requests.[70] As the Assessor is required to do, it again cataloged any exceptions it identified, which it noted were [redacted] than the gaps identified in 2021, and concluded that "[t]he nature of the Gaps found is consistent with the maturation of the [Privacy Program] in light of Meta effectively addressing previous weaknesses."[71] In short, the 2023 Assessment Report affirms that Meta has only continued to improve the comprehensive Program it established in 2020.

6. Meta More Than Satisfied Every Requirement in Part VII of the Order

26. The facts and record—including the Initial Assessment Report, an extensive record established through responses to over [redacted] Part XV requests from the Commission,[72] and the 2023 Assessment Report—all confirm that Meta has established, implemented, and maintained a comprehensive Privacy Program satisfying the requirements of Parts VII.A–J. Specific elements of Meta's compliance with each particular requirement of Part VII are set forth in the sections below, which also address the specific allegations cited in the OTSC. None of the other purported facts the Commission cites in its Preliminary Findings of Fact—which themselves are inaccurate and misleading for the reasons set forth in the Section IV, *infra*, and which the Commission does not even mention in its OTSC—suggest that Meta's Privacy Program was anything other than effective and Order-compliant.

[70] *Id.* at 5, 7.

[71] *Id.* at 7.

[72] *See generally* Exs. 87–102.

(a) Meta Fully Satisfied the Requirements of Parts VII.A, VII.B, and VII.C of the Order

27. The initial requirements under Part VII concern Meta's obligations to document certain specified components of the Privacy Program (Part VII.A), to deliver such documentation to Meta's Chief Executive Officer and Privacy Committee (Part VII.B), and to appoint a Designated Compliance Officer ("DCO")—also to be the Chief Privacy Officer for Product ("CPO")—to oversee and be responsible for the Privacy Program Part VII.C).[73] Meta established processes within its Governance control domain to maintain and deliver the required documentation, and appointed a DCO and CPO as required.[74] The OTSC makes no allegations regarding these processes, nor did the Initial Assessment Report contain any findings related thereto.[75] There is thus no question that Meta complied with these provisions.

(b) Meta's Privacy Risk Assessment Process Fully Complies with the Requirements of Part VII.D of the Order, is Effective, and is Continuously Improving

28. Meta established a robust privacy risk assessment process to identify and evaluate risks across the Company in a manner that fully complies with the requirements of Part VII.D. Part VII.D of the Order requires Meta to "[a]ssess and document, at least once every twelve (12) months, internal and external risks in each area of its operation . . . to the privacy, confidentiality, or Integrity of Covered Information that could result in the unauthorized access, collection, use, destruction, or disclosure of such information" and to further "assess and document internal and external risks as described above as they relate to a Covered Incident . . .

[73] *See* Order, Parts VII.A–C.

[74] Ex. 4 (2021 Assessment Report) at 20–21.

[75] *See generally id.* at 15–25.

not to exceed thirty (30) days after the incident is verified or otherwise confirmed."[76] [redacted], Meta began its first company-wide privacy risk assessment ("PRA 1.0"), [redacted][77] [redacted][78] In addition to its company-wide risk assessment, Meta also established processes to [redacted][79]

29. The OTSC concedes Meta's compliance with Part VII.D, affirming that Meta performed a company-wide risk assessment [redacted][80] Nothing in the Initial Assessment Report suggests otherwise—the OTSC points to findings related to [redacted][81] none of which call into question Meta's compliance with Part VII.D. Indeed, Part VII does not prescribe any form or manner for how privacy risk assessments are to be conducted or documented.

[76] Order, Part VII.D.

[77] Ex. 4 (2021 Assessment Report) at 40–41; *see infra* Section IV.B, Resp. to PFOF ¶¶ 30–32.

[78] Ex. 4 (2021 Assessment Report) at 41; *see infra* Section IV.B ¶¶ 33–49.

[79] Ex. 4 (2021 Assessment Report) at 49. A Covered Incident is defined in the Order as "any instance in which [Meta] has verified or otherwise confirmed that the Covered Information of 500 or more Users was or was likely to have been accessed, collected, used, or shared by a Covered Third Party in violation of [Meta's] Platform Terms." Order, Definition C.

[80] OTSC at 5.

[81] *Id.*

30. First, the OTSC cites [redacted][82] Beyond the fact that the Order does not mandate inclusion of [redacted], the Assessor expressly found that Meta's approach in PRA 1.0 [redacted][83] Next, the OTSC cites PRA 1.0's [redacted][84] neither of which is a reasonable criticism much less required by the Order) given that the Order called for PRA 1.0 to be completed on the same day it required the Privacy Program to begin operation.[85] Indeed, the Assessor explicitly noted that [redacted][86] Finally, the OTSC cites a [redacted][87] which have no connection to Meta's privacy risk assessments themselves, much less Part VII.D or any other Order provision. And nowhere does the Commission or the Initial Assessment Report identify any harm to consumers arising from the findings as to PRA 1.0. In short, nothing in the OTSC undermines Meta's compliance with Part

[82] *Id.*; Ex. 4 (2021 Assessment Report) at 43.

[83] Ex. 4 (2021 Assessment Report) at 43.

[84] OTSC at 5.

[85] *See infra* Section IV.B, Resp. to PFOF ¶¶ 30–32.

[86] Ex. 4 (2021 Assessment Report) at 49.

[87] OTSC at 5.

VII.D—on the contrary, it affirms it, acknowledging that Meta completed the requisite privacy risk assessment.

31. Moreover, Meta has since addressed the Assessor's 2021 findings regarding PRA 1.0. Consistent with its plans from the start,[88] and as recognized by the Assessor, Meta rolled out [89] For its second annual PRA ("PRA 2021"), Meta [90] [91] As the Assessor found, Meta's third annual PRA ("PRA 2022") [92] According to the Assessor, these enhancements [93] Thus, Meta has consistently satisfied its obligations under Part VII.D since implementing its Privacy Program and demonstrated a commitment to continuously improving its privacy risk assessment processes.

[88] *See* Ex. 11 (Oct. 24, 2020 Compliance Report) at 11.

[89] Ex. D (2023 Assessment Report) at 12.

[90] Meta's procedures are discussed in greater detail in relation to Part VII.F of the Order at Section I.A.6.i, *infra*.

[91] *See* Ex. D (2023 Assessment Report) at 56; *infra* Section IV.B ¶¶ 50–62, 63–85.

[92] *See* Ex. D (2023 Assessment Report) at 56.

[93] *Id.* at 12.

(c) Meta Designed, Implemented, and Maintains Safeguards that Exceed the Requirements of Part VII.E of the Order, are Effective, and are Continuously Improving

32. Meta has exceeded the requirements of Part VII.E, establishing an expansive Safeguard environment that operates to protect privacy across Meta. Part VII.E of the Order requires Meta to "[d]esign, implement, maintain and document safeguards that control for the material internal and external risks identified by [Meta] in response to" its Part VII.D privacy risk assessments, and that "[e]ach safeguard shall be based on the volume and sensitivity of the Covered Information that is at risk, and the likelihood that the risk could be realized and result in the unauthorized access, collection, use, destruction, or disclosure of the Covered Information."[94] While the Order contains specific required safeguards for aspects of Meta's Privacy Program within Parts VII.E.1–5 (each discussed below), it otherwise confers Meta with broad discretion to determine the design, structure, and scope of the Program's safeguards. Taking this discretion seriously, Meta's management took the strategic decision to completely redesign and rebuild its Privacy Program—without regard to materiality. This included the design and implementation of over [redacted] safeguards organized around [redacted][95] Some of these safeguards were tethered to (but exceed) specific requirements in Part VII, while others were created to build out Meta's vision of a Program beyond the four corners of Part VII—for example, Complaints and Issue Management, Data Life Cycle Management, and Transparency, Notice and Choice. Consistent with compliance best practices and Part VII, Meta continuously improves its safeguard environment in response to the results of

[94] Order, Part VII.E.

[95] *See* Ex. 4 (2021 Assessment Report) at 7, 15.

internal and external safeguard testing and other initiatives to enhance the Privacy Program.[96] In total, Meta implemented an expansive Safeguard environment not limited to Part VII.E or any other Order requirement.

(d) Meta's Third Party Risk Management Program Exceeds the Requirements of Part VII.E.1 of the Order, is Effective, and Is Continuously Improving

33. Meta designed and implemented an expansive Third Party Risk Management ("TPRM") program that exceeds Order requirements and addresses privacy risks across the life cycle of its third-party relationships. Part VII.E.1 of the Order requires, for a particular subset of Covered Third Parties,[97]

- safeguards "[r]equiring an annual self-certification by each Covered Third Party that certifies: (i) its compliance with each of [Meta]'s Platform Terms; and (ii) the purpose(s) or use(s) for each type of Covered Information to which it requests or continues to have access, and that each specified purpose or use complies with [Meta]'s Platform Terms" (Part VII.E.1.a);
- safeguards "[d]enying or terminating access to any type of Covered Information that the Covered Third Party fails to certify pursuant to Part VII.E.1.a.(ii) above, or, if the Covered Third Party fails to complete the annual self-certification, denying or terminating access to all Covered Information unless the Covered Third Party cures such failure within a reasonable time, not to exceed thirty (30 days" (Part VII.E.1.b);
- safeguards "[m]onitoring Covered Third Party compliance with [Meta]'s Platform Terms through measures including, but not limited to, ongoing manual reviews and automated scans, and regular assessments, audits, or other technical and operational testing at least once every twelve (12) months" (Part VII.E.1.c); and
- safeguards "[e]nforcing against any Covered Third Party violations of [Meta]'s Platform Terms based solely on the severity, nature, and impact of the violation; the Covered Third Party's malicious conduct or history of violations; and applicable law[.]" (Part VII.E.1.d.)

[96] *See, e.g.*, *infra* Section I.F.9 ¶¶ 54–57; Ex. D (2023 Assessment Report) at 6–12.

[97] Part VII.E.1 specifically requires safeguards that apply to "any Covered Third Party that obtains or otherwise has access to Covered Information from [Meta] for use in an independent, third-party consumer application or website[.]" Order, Part VII.E.1.

Encompassing approximately [redacted] of Privacy Program safeguards as of the Initial Assessment,[98] Meta's TPRM processes [redacted][99] [redacted][100] Many of these processes entail multiple layers of overlapping controls to address potential risks from multiple angles—[redacted][101]

34. Meta's TPRM program includes dedicated processes that satisfy each of the requirements of Part VII.E.1, as well as other processes not contemplated by the Order to control for third-party risks. [redacted]

[98] *See* Ex. 4 (2021 Assessment Report) at 134.

[99] *See id.* at 150, 170.

[100] Ex. 4 (2021 Assessment Report) at 135–44; Ex. D (2023 Assessment Report) at 168–75.

[101] *See* Ex. 4 (2021 Assessment Report) at 138–39; Ex. D (2023 Assessment Report) at 170; *see also infra* Section IV.D, Resp. to PFOF ¶¶ 375–91.

[redacted][102] [redacted] the application's access to Covered Information within the time periods required under Part VII.E.1.b.[103] And in satisfaction of Part VII.E.1.c, Meta maintains [redacted][104] [redacted][105] Meta leverages this process to [redacted][106] For instance, [redacted][107] [redacted][108] Finally, Meta maintains [redacted]

[102] *See* Ex. 4 (2021 Assessment Report) at 142; *see infra* Section IV.D, Resp. to PFOF ¶¶ 375–91.

[103] *Id.*

[104] Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 1) at 38–43; *see also infra* Section IV.D, Resp. to PFOF ¶¶ 375–91.

[105] Ex. D (2023 Assessment Report) at 170; *see also infra* Section IV.D, Resp. to PFOF ¶¶ 399–407.

[106] Ex. D (2023 Assessment Report) at 170; *see also infra* Section IV.D, Resp. to PFOF ¶¶ 375–91.

[107] *Id.*

[108] Ex. D (2023 Assessment Report) at 170; *see also* Ex. 6 (Nov. 19, 2021 resp. to Sept. 22 request 3) at 38; *infra* Section IV.D, Resp. to PFOF ¶¶ 375–91.

[redacted][109]

35. Nothing in the OTSC or the Initial Assessment Report calls into question Meta's compliance with Part VII.E.1.[110] Indeed, the OTSC labels [redacted][111] Yet even if the Order were to require additional monitoring measures for certain categories of Covered Third Parties (which it does not), the OTSC omits that Part VII.E.1.c gave Meta a *year* to undertake its monitoring obligations and that the Assessor confirms Meta did so. As the Assessor noted, [redacted][112] [redacted]. In its 2023 Assessment Report, the Assessor [redacted][113] In short, what the OTSC deems the "[redacted]" finding had no bearing on Meta's

[109] *See* Ex. 4 (2021 Assessment Report) at 143; *see also infra* Section IV.D, Resp. to PFOF ¶¶ 375–91.

[110] *See* OTSC at 6; Ex. 4 (2021 Assessment Report) at 6, 150–54.

[111] OTSC at 6.

[112] Ex. D (2023 Assessment Report) at 184.

[113] *Id*. at 11.

Order compliance, was addressed before the relevant Order provision came due, and related only to a tiny percentage ([redacted] of relevant third parties.

36. The only other TPRM-related finding the OTSC points to relates to [redacted][114] Yet nothing in the Order requires Meta to [redacted],[115] much less within the arbitrary [redacted] period suggested by the Commission in its proposed findings.[116] Moreover, even applying such a [redacted] standard, [redacted][117] [redacted][118] [redacted] is irrelevant to Meta's Order compliance and only demonstrates the overwhelming effectiveness of its third-party controls. And contrary to the Commission's assertion that "[t]hese problems are particularly significant because they involve the same areas that precipitated the Commission's previous action," nowhere does the Commission or the Initial Assessment Report identify any harm to consumers arising from the Assessor's findings or explain how they bear a relationship to the "same areas" as "the Commission's previous action."[119]

37. Since the Initial Assessment, Meta has only improved and expanded the TPRM control domain. As the Assessor recognized, Meta [redacted]

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[114] *See* OTSC at 6.

[115] *See* Order, Part VII.E.1.d (requiring only that Meta's enforcement actions be based on certain criteria .

[116] *See* PFOF ¶¶ 469–75; *see also* Ex. 7 (Dec. 3, 2021 resp. to Sept. 1, 2021 request 4) at 8–11.

[117] *See* OTSC at 6.

[118] *See infra* Section IV.D, Resp. to PFOF ¶¶ 469–75; *see also* Ex. 7 (Dec. 3, 2021 resp. to Sept. 1, 2021 request 4) at 9–10.

[119] *See* OTSC at 6; Ex. 4 (2021 Assessment Report) at 134–62; *see also* Ex. D (2023 Assessment Report) at 164–94.

[redacted][120] With respect to third-party monitoring procedures, these improvements included [redacted][121] To further mature Meta's [redacted], leading the Assessor to conclude that Meta had remediated the finding by the end of 2021.[122] As a result of these and other improvements, the Assessor concluded that TPRM was one of several control domains where Meta took "a holistic and strategic approach to address the root cause of the previously identified issues."[123]

(e) Meta's Privacy Review Program Exceeds the Requirements of Part VII.E.2 of the Order, is Effective, and is Continuously Improving

38. Meta established and scaled a Privacy Review process that meaningfully exceeds the requirements of Part VII.E.2. Part VII.E.2 requires Meta to implement:

- safeguards that entail "[p]rior to implementing each new or modified product, service, or practice, (i) conducting a privacy review that assesses the risks to the privacy,

[120] Ex. D (2023 Assessment Report) at 184 [redacted].

[121] *See id*. at 11, 170, 184; *see also infra* Section IV.D, Resp. to PFOF ¶¶ 394–98.

[122] *See* Ex. D (2023 Assessment Report) at 185–86.

[123] *Id*. at 9.

confidentiality, and Integrity of the Covered Information, the safeguards in place to control such risks, and the sufficiency of the User notice and, if necessary, consent; and (ii) documenting a description of each reviewed product, service, or practice that was ultimately implemented; any safeguards being implemented to control for the identified risks; and the decision or recommendation made as a result of the review";[124]

- safeguards that entail "[f]or each new or modified product, service, or practice that presents a material risk to the privacy, confidentiality, or Integrity of the Covered Information . . . producing a written report ('Privacy Review Statement') that describes" specific categories of information, including the types of Covered Information to be collected, notice that will be provided to users, and other items;[125] and

- safeguards that entail a Quarterly Privacy Review Report that includes "a detailed discussion of the material risks to the privacy, confidentiality, and Integrity of the Covered Information that were identified and how such risks were addressed; (ii) an appendix with each Privacy Review Statement generated during the prior fiscal quarter under Part VII.E.2.b; and (iii) an appendix that lists all privacy decisions generated during the prior fiscal quarter under Part VII.E.2.a," which Meta's Designated Compliance Officer shall provide to the Principal Executive Officer (i.e., Mark Zuckerberg), to the Assessor, and—if requested—to the Commission.[126]

Going beyond these requirements, the Privacy Review control domain includes [redacted][127] [redacted][128]

As the Assessor recognized, Meta embedded the Privacy Review process throughout the Company, hiring more than [redacted] Privacy Program Managers ("PPMs") by the end of the

[124] Order, Part VII.E.2.a.

[125] *Id.* at Part VII.E.2.b.

[126] *Id.* at Part VII.E.2.c–e.

[127] *See generally infra* Section IV.C, Resp. to PFOF ¶¶ 171–370.

[128] *See generally id.*

Initial Assessment[129] (and expanding by [redacted] more throughout the first biennial Assessment) [redacted][130] [redacted][131] [redacted][132] As of the close of the Initial Assessment, the Assessor concluded that [redacted][133]

39. The OTSC fundamentally misunderstands and misstates the breadth of the Privacy Review process [redacted]—pointing to exceptions and areas for maturation that are divorced from Part VII.E.2's requirements and ignoring the backdrop of a comprehensive process utilizing multiple layers of complementary controls. The OTSC first cites [redacted][134] Yet the Commission's allegations ignore the context of this observation—in particular, that the Assessor found [redacted]

[129] *See* Ex. 4 (2021 Assessment Report) at 2.

[130] *See* Ex. D (2023 Assessment Report) at 7.

[131] *See infra* Section IV.C, Resp. to PFOF ¶¶ 177–82; *see also* Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 requests 6–7) at 16.

[132] Ex. A (Letter from M. Protti to Federal Trade Commission (July 1, 2021 at 7; *see also* Ex. 4 (2021 Assessment Report) at 73.

[133] Ex. 4 (2021 Assessment Report) at 73.

[134] *Id.*

[redacted][135] But nothing in Part VII.E.2 requires Meta to institute multiple layers of controls to address the same risk, and the Commission's criticism is undercut by [redacted][136] These controls included [redacted][137] [redacted][138] [redacted][139] [redacted][140] [redacted][141] Within this web of protections, the fact that Meta was still improving [redacted][142]—does not undermine the broad Privacy Review apparatus Meta implemented and embedded across the Company. In faulting Meta for gaps in complex and groundbreaking technical tools—designed to supplement its existing controls—the OTSC effectively seeks to punish Meta for developing cutting-edge, privacy-protective technologies, rather than recognize where Meta has gone above and beyond the Order.

[135] *See* PFOF ¶¶ 171–370; *see also infra* Section IV.C, Resp. to PFOF ¶¶ 171–370.

[136] *See* Ex. 4 (2021 Assessment Report) at 65, 73.

[137] *Id.* at 73.

[138] *See id.* at 16.

[139] *See infra* Section IV.C, Resp. to PFOF ¶¶ 191–99.

[140] *See* Ex. 4 (2021 Assessment Report) at 70; *see also infra* Section IV.C, Resp. to PFOF ¶¶ 214–51, 318–27.

[141] *See infra* Section IV.C, Resp. to PFOF ¶¶ 207–13, 214–51; *see also* Ex. 4 (2021 Assessment Report at 5, 76.

[142] *See* Ex. 4 (2021 Assessment Report) at 5.

40. Indeed, the laundry list of statistics the Commission cites to [redacted] only demonstrates the success and breadth of Meta's processes to detect and remediate deviations from its policies. These include:

- [redacted][143] [redacted][144]
- [redacted][145] [redacted][146]—yet these numbers have little to no bearing on [redacted] As the Assessor noted, [redacted][147] For context, as of the Initial Assessment, Meta deployed over [redacted] code changes quarterly,[148] the vast majority of which had no privacy implications.[149]
- [redacted][150]
- Finally, [redacted][151]

[143] *See* PFOF ¶ 210.

[144] *See* Ex. 4 (2021 Assessment Report) at 73 (noting that Meta conducted over [redacted] Privacy Reviews quarterly during the Initial Assessment).

[145] *See* PFOF ¶¶ 236–41.

[146] *See id.* ¶ 348.

[147] *See* Ex. D (2023 Assessment Report) at 85 (emphasis added).

[148] *See* Ex. 4 (2021 Assessment Report) at 73.

[149] *See* Ex. D (2023 Assessment Report) at 82 (noting that only [redacted] of code changes had privacy implications).

[150] *See* PFOF ¶ 347.

[151] *See* PFOF ¶ 249; *see also infra* Section IV.C, Resp. to PFOF ¶¶ 214-51. The Commission also appears to point to instances where Meta completed Privacy Reviews when the change was ready to, but had not yet, launched, without any reasonable explanation of why those instances are relevant to Part VII. *See* PFOF ¶ 249; *see also infra* Section IV.C, Resp. to PFOF ¶¶ 214-51.

The Commission also omits that Meta [redacted].[152] It also omits that these findings [redacted] which extend more broadly than the Order.[153] And perhaps most importantly, [redacted][154]

41. Second, [redacted][155] These gaps primarily reflected areas to [redacted] and in no way suggest that Meta failed to satisfy Part VII.E.2.a's limited documentation requirements, which call for documentation of a description of the change, the relevant mitigations, and the decision,[156] [redacted][157] In particular, the Assessor [redacted][158]

[152] *See* Ex. D (2023 Assessment Report) at 84–85.

[153] *See infra* Section IV.C, Resp. to PFOF ¶¶ 185–90.

[154] *See* Ex. D (2023 Assessment Report) at 93.

[155] Ex. 4 (2021 Assessment Report) at 73.

[156] Order, Part VII.E.2.a.

[157] *See infra* Section IV.C, Resp. to PFOF ¶¶ 253–62.

[158] *See* PFOF ¶¶ 277–80.

[redacted][159] [redacted]

[redacted][161] None of these [redacted] findings undermines Meta's Order compliance. Nor are they surprising given that Meta undertook [redacted]

[redacted][162]

42. Indeed, the lack of impact from these gaps is evident in the figures the Commission cites. First, [redacted]

[redacted][163] The Commission omits that [redacted]

[redacted][164] Next, the Commission [redacted]

[redacted][165] [redacted]

43. Nor did the Assessor's 2021 gap related [redacted] undermine Meta's compliance with Part

[159] *See id.* ¶¶ 263–66.

[160] *See id.* ¶¶ 267–76.

[161] *See id.* ¶¶ 281–89.

[162] *See* Ex. 4 (2021 Assessment Report) at 73.

[163] *Id.* at 79 (emphasis added); PFOF ¶ 284.

[164] *See infra* Section IV.C, Resp. to PFOF ¶¶ 281–89; *see also* Ex. 7 (Dec. 3, 2021 resp. to Oct. 1, 2021 request 3) at 19–20.

[165] *See* PFOF ¶ 286.

VII.E.2.b.[166] While the Assessor noted that [redacted] [167] nothing in Part VII.E.2.b prescribes [redacted] [168] Meta's first QPRR provided [redacted] [169] satisfying Part VII.E.2.b. Moreover, the Assessor confirmed that Meta addressed this gap in 2021.[170]

44. Third, [redacted] [171] [redacted] which Meta voluntarily adopted in its efforts to go above and beyond Order requirements. [redacted] [172] The Assessor's findings [redacted]

[166] Consistent with the structure of the 2023 Assessment Report and the Order, Meta's QPRR—which the OTSC discusses in connection with the Compliance Monitoring, Enforcement, and Reporting ("CMER") domain—is discussed in this section.

[167] Ex. D (2023 Assessment Report) at 94–95.

[168] *See* Order, Part VII.E.2.b–c; Ex. 4 (2021 Assessment Report) at 51, 59, 62.

[169] *See* Ex. 14 (Jan. 11, 2022 resp. to Nov. 24, 2021 request 7) at 17; *see also infra* Section IV.J, Resp. to PFOF ¶¶ 936–48. [redacted] *See* Ex. 14 (Jan. 11, 2022 resp. to Nov. 24, 2021 request 7) at 17; *see also infra* Section IV.J, Resp. to PFOF ¶¶ 936–48.

[170] *See* Ex. D (2023 Assessment Report) at 95–96.

[171] Ex. 4 (2021 Assessment Report) at 73.

[172] *See infra* Section IV.C, Resp. to PFOF ¶¶ 290–305; *see also* Ex. D (2023 Assessment Report) at 95.

[redacted][173] The Commission ignores that nothing in Part VII.E.2 requires Meta to implement such standards or processes, much less to [redacted]. Indeed, the Commission ignores that [redacted][174]

45. Finally, [redacted][175] To be clear: this process was a challenge that Meta met, and exceeded. Nothing in these records suggests that Meta personnel were not adhering to Meta's Privacy Review process, to the extent they relate to Privacy Review at all. On the contrary, these records underscore the rigor of Meta's Order compliance efforts, that privacy was prioritized over product development, and the extent of change embedded across the Company, consistent with the Commission's stated goal for the Order "to change [Meta's] entire privacy culture."[176] In one cited email, a senior Meta executive stated in December 2020—mere months into the Privacy Program—[redacted]

[173] *See* PFOF ¶¶ 312–13.

[174] *See* PFOF ¶¶ 325–326 ([redacted]; *see also* PFOF ¶ 336 ([redacted].

[175] *See* OTSC at 5–6.

[176] Statement of Chairman Joe Simons, Federal Trade Commission (July 24, 2019), https://www.ftc.gov/news-events/news/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions-facebook.

[redacted].[177] In another, a PPM noted that certain product teams wanted to move faster,[178] but expressly stated that he continued to undertake "compliant and meaningful [Privacy Reviews]."[179] And finally, the cited testimony from Meta's CEO relates not specifically to Meta's Privacy Review processes, but Meta's broader effort to go above and beyond the Order by [redacted][180]

46. In short, the OTSC relies on gaps that only serve to reflect the depth and scale at which the Privacy Review process operated even in the Program's first months, [redacted]—none of which are required under the Order. Indeed, as discussed above, nothing the OTSC cites undermines Meta's compliance with Part VII.E.2. Furthermore, neither the Commission nor the Initial Assessment Report identify any harm to consumers arising from the Assessor's findings.

47. The OTSC also ignores the significant and continuous improvements Meta has made to its Privacy Review process. Meta's expansive efforts to go beyond the Order are best captured in the Assessor's most recent Report, which lauded Privacy Review for taking a "holistic and strategic approach"[181] that entailed [redacted]

[177] *See* PFOF ¶ 358; *see also infra* Section IV.C, Resp. to PFOF ¶¶ 358–64.

[178] *See* PFOF ¶ 359.

[179] *See infra* Section IV.C, Resp. to PFOF ¶¶ 358–64.

[180] *See* Ex. D (2023 Assessment Report) at 8; PFOF ¶¶ 365–70; *see also infra* Section IV.C, Resp. to PFOF ¶¶ 365–70.

[181] Ex. D (2023 Assessment Report) at 9.

[redacted][182] The Assessor also [redacted] [redacted][183] As set forth in the 2023 Assessment Report, some of the many improvements Meta implemented include [redacted];[184] [redacted][185] [redacted][186] [redacted][187] [redacted] hiring an additional [redacted] PPMs;[188] [redacted][189] These changes have only continued to improve the process—Meta [redacted][190] [redacted]

[182] *Id.* at 74.

[183] *Id.* at 13 (emphasis added).

[184] *Id.* at 8.

[185] *See id.* at 57, 60.

[186] *See id.* at 95.

[187] *See id.* at 83, 95.

[188] *See id.* at 7.

[189] *See id.* at 10, 79–80.

[190] *See id.* at 10, 92–93.

[redacted][191] [redacted]

[redacted][192]

(f) Meta's Security for Privacy Program Exceeds the Requirements of Part VII.E.3, is Effective, and is Continuously Improving

48. As part of its Security for Privacy control domain, Meta implemented access controls that meaningfully exceed Order requirements and were characterized by the Assessor, in relevant part, [redacted][193] Part VII.E.3 of the Order requires Meta, "[s]pecifically with respect to [Meta]'s employees' access to Covered Information maintained in [Meta]'s data warehouse(s)," to implement "access policies and controls that limit employee access to any table(s) or other comparable data storage units known to contain Covered Information to only those employees with a business need to access such Covered Information."[194] Meta maintains [redacted]

[redacted][195] [redacted][196] [redacted]

[redacted][197] [redacted]

[redacted]

[191] *See id.* at 78; *see also infra* Section IV.C, Resp. to PFOF ¶¶ 290–305.

[192] *See infra* Section IV.C, Resp. to PFOF ¶¶ 290–305; *see also* Ex. D (2023 Assessment Report) at 78.

[193] Ex. 4 (2021 Assessment Report) at 120.

[194] Order, Part VII.E.3.

[195] Ex. D (2023 Assessment Report) at 134.

[196] As noted in the 2023 Assessment Report, [redacted]" Ex. D (2023 Assessment Report) at 108.

[197] *See* Ex. 4 (2021 Assessment Report) at 115; Ex. D (2023 Assessment Report) at 135.

[redacted][198]

49. Going beyond Part VII.E.3's requirements, which relate solely to the Data Warehouse, Meta employs [redacted][199] Indeed, though not specifically required under Part VII, Meta maintains a broader [redacted][200] More broadly, Meta maintains a Comprehensive Information Security Program ("CISP") designed to "protect the confidentiality, integrity, and availability of data stored on Meta's systems, platforms, and products."[201] As the Assessor recognized, Meta's CISP encompasses not only access controls, but "[redacted] of complementary processes and procedures throughout the organization to manage security risks."[202]

50. The OTSC makes no allegations regarding Meta's employee access controls for the Data Warehouse, nor did the Assessor make any related findings in its Initial Assessment.[203]

[198] Ex. 4 (2021 Assessment Report) at 115–116; Ex. D (2023 Assessment Report) at 135.

[199] Ex. 4 (2021 Assessment Report) at 116–118; Ex. D (2023 Assessment Report) at 136–37, 139.

[200] Ex. 4 (2021 Assessment Report) at 114; Ex. D (2023 Assessment Report) at 137.

[201] Ex. D (2023 Assessment Report) at 134; *see* Ex. 4 (2021 Assessment Report) at 114.

[202] *Id.*

[203] The Assessor's sole finding with respect [redacted]—like the Assessor's other findings, this gap has no bearing on Meta's Part VII compliance. *See* Ex. 4 (2021 Assessment Report) at 120. Meta remediated this finding in December 2021. *See* Ex. D (2023 Assessment Report) at 143.

On the contrary, the Assessor found that [redacted][204] There is thus no question that Meta complied with Part VII.E.3. The OTSC instead points to [redacted][205] [redacted][206] The cited findings concern edge cases that implicate negligible (if any) privacy risk, [redacted][207] These include, for example, [redacted][208] Similarly, the Commission includes observations regarding limited exceptions from Meta's [redacted]

[204] Ex. 4 (2021 Assessment Report) at 120.

[205] *Id.* at 118.

[206] *See infra* Section IV.G, Resp. to PFOF ¶¶ 708–20.

[207] *See* OTSC at 8; Ex. 4 (2021 Assessment Report) at 120.

[208] PFOF ¶¶ 737–42.

[redacted][209] [redacted][210] [redacted]

[redacted][211]

51. Lastly, the OTSC points to the [redacted]

[redacted][212] despite the fact that [redacted]

[redacted]

[redacted][213] Regardless, Part VII does not require that Meta implement [redacted]

[redacted][214] And despite allegations that these edge cases *could* have posed privacy risk,[215] nowhere does the Commission or the Initial Assessment Report identify any harm to consumers arising from the Assessor's findings.[216]

52. Nevertheless, as recognized in the 2023 Assessment Report,[217] Meta addressed each of the Assessor's Security for Privacy findings. Meta updated [redacted]

[redacted]

[redacted]

[redacted][218] Throughout, Assessor testing [redacted]

[redacted][219]

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[209] *Id.* ¶ 718.

[210] *Id.* ¶ 714.

[211] Ex. 17 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 3) at 16.

[212] *See* OTSC at 8.

[213] Ex. 4 (2021 Assessment Report) at 121.

[214] *See infra* Section IV.G, Resp. to PFOF ¶¶ 752–55.

[215] *See, e.g.*, PFOF ¶ 751.

[216] *See infra* Section IV.G, Resp. to PFOF ¶¶ 743–51.

[217] Ex. D (2023 Assessment Report) at 142.

[218] Ex. 17 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 1) at 9; *see also* Ex. 76 (Apr. 15, 2022 resp. to Mar. 17, 2022 requests 1.a–1.e) at 4–6; *infra* Section IV.G, Resp. to PFOF ¶¶ 743–51.

[219] *See generally* Ex. D (2023 Assessment Report) at 146–47.

Meta also remediated the Assessor's findings relating [redacted][220] Lastly, Meta established [redacted][221] As a result, the Assessor found that [redacted][222] In short, as part of its commitment to continuous improvement, Meta has continued to enhance its Security for Privacy domain, even though none of the Assessor's 2021 findings implicated Meta's Order compliance.

(g) Meta's Affiliate-Sharing Controls Exceed the Requirements of Part VII.E.4 of the Order, are Effective, and are Continuously Improving

53. Meta implemented robust affiliate-data sharing controls [redacted] that meaningfully exceed Part VII.E.4. By design, the Order requirements relating to "[Meta]-owned affiliates" ("affiliates") are limited: Affiliates are out of scope for Parts VII-VIII of the Order, which imposes only narrow obligations when Meta shares Covered Information with them.[223] Part VII.E.4 of the Order requires "[s]pecifically with respect to [Meta's] sharing of Covered Information with any other [Meta]-owned affiliate, [Meta] shall design, implement, maintain, and document safeguards that control for risks to the privacy, confidentiality, and Integrity of

[220] *See id.* at 142; Section IV.G, Resp. to PFOF ¶¶ 728–42.

[221] Ex. D (2023 Assessment Report) at 142–43.

[222] *Id.* at 142.

[223] *See* Order, Definition Q, Part VII.E.4; Ex. 4 (2021 Assessment Report) at 84 (recognizing that Part VII.E.4 of the Order applies to the sharing of Covered Information from Meta to "[Meta]-owned affiliates that are not subject to Parts VII–VIII of the Order").

such Covered Information, based on the volume and sensitivity of such Covered Information that is at risk, and the likelihood that the risk could be realized and result in the unauthorized access, collection, use, destruction, or disclosure of the Covered Information."[224] Part VII imposes no requirements on sharing of Covered Information between affiliates, nor specific requirements on the sharing of Covered Information from affiliates to Meta. Affiliates consist of a limited set of products, services, and practices—most typically, recent acquisitions—that meet certain separateness criteria from Meta and generally are not fully integrated with Meta's systems and processes.[225] Indeed, as of the most recent Assessment, [redacted][226] [redacted]

54. Meta employed internal policies and procedures that exceed Part VII.E.4. As of the Initial Assessment, Meta [redacted][227] In addition to [redacted][228] These measures [redacted]

[224] Order, Part VII.E.4.

[225] *See* Ex. 4 (2021 Assessment Report) at 7; *see also* Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 8) at 15. Specifically, affiliates encompass the limited set of products, services, or related areas that are offered by an entity other than Meta Platforms, Inc. or WhatsApp Inc. and are not subject to the Meta Privacy Policy or the WhatsApp Privacy Policy. *See* Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 8) at 15.

[226] *See* Ex. D (2023 Assessment Report) at 69.

[227] Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 request 8) at 5; *see infra* Section IV.C, Resp. to PFOF ¶¶ 267–76.

[228] Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 request 16) at 22; *see infra* Section IV.C, Resp. to PFOF ¶¶ 267–76.

[redacted][229] First, [redacted]

[redacted][230] Second, [redacted]

[redacted][231] Third, where appropriate, Meta's procedures included [redacted]

[redacted][232]

55. The OTSC makes no allegations regarding Meta's compliance with Part VII.E.4. Instead, the OTSC vaguely acknowledges that [redacted]

[redacted][233] The OTSC ignores the additional measures Meta employed to protect Covered Information,[234] the fact that Meta went beyond Part VII.E.4 in requiring [redacted][235] [redacted]

[redacted][236] (placing them outside the scope of Part VII.E.4), [redacted]

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[229] Ex. 7 (Meta's Dec. 3, 2021 resp. to Aug. 27, 2021 request 16) at 22–23; *see infra* Section IV.C, Resp. to PFOF ¶¶ 267–76.

[230] Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 request 16) at 23; *see infra* Section IV.C, Resp. to PFOF ¶¶ 267–76.

[231] Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 request 16) at 23.

[232] *Id.*; *see infra* Section IV.C, Resp. to PFOF ¶¶ 267–76.

[233] OTSC at 5.

[234] Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 request 16) at 24–25; *see infra* Section IV.C, Resp to PFOF ¶¶ 267–76.

[235] *Id.*

[236] *See* Ex. D (2023 Assessment Report) at 69.

[redacted][237] Nor does the Commission or the Initial Assessment Report identify any harm to consumers arising from the Assessor's findings.

56. Nevertheless, since the Initial Assessment, Meta has enhanced its affiliate-sharing controls by implementing additional safeguards and refining existing processes. For example, Meta implemented the [redacted][238] Meta also improved [redacted][239] Further, Meta formalized its [redacted][240] And, as the Assessor recognized in the 2023 Assessment [redacted][241] Meta has thus continued to improve its affiliate-sharing controls above and beyond the requirements of Part VII.E.4.

[237] *See id.*

[238] *Id.* at 65; *infra* Section IV.C, Resp. to PFOF ¶¶ 267–76.

[239] Ex. D (2023 Assessment Report) at 65.

[240] *See id.*

[241] *See id.* at 69.

(h) Meta's Controls for Facial Recognition Templates, Which It No Longer Uses, Fully Satisfy Part VII.E.5 of the Order

57. As part of its Transparency, Notice, and Choice control domain, Meta maintained processes designed to ensure that it provided appropriate notice, and obtained affirmative express consent with respect to Facial Recognition Templates when required by Part VII.E.5. Part VII.E.5 requires Meta to design, implement, document, and maintain safeguards that ensure "[p]rior to using or sharing any Facial Recognition Template for a User in a manner that materially exceeds the types of uses or sharing disclosed to that User at the time that User's consent was previously obtained . . . Clearly and Conspicuously disclosing . . . how [Meta] will use or, to the extent applicable, share, such Facial Recognition Template; and . . . Obtaining the User's affirmative express consent."[242] As part of the Privacy Program launch in October 2020, Meta implemented safeguards to help ensure that it had provided the requisite notice and obtained the requisite consent prior to the creation, use, or sharing of Facial Recognition Templates.[243] The OTSC makes no allegations, and the Assessor had no findings, with respect to Meta's facial recognition practices. Indeed, as the Assessor validated, Meta no longer even maintains Facial Recognition Templates.[244] There is thus no question that Meta complied with Part VII.E.5.

(i) Meta's Safeguard Effectiveness Testing Processes Exceed the Requirements of Part VII.F of the Order, are Effective, and are Continuously Improving

58. As part of its broader Compliance Monitoring, Enforcement and Reporting control domain, Meta established [redacted] that

[242] Order, Part VII.E.5.

[243] *See* Ex. 4 (2021 Assessment Report) at 124.

[244] Ex. D (2023 Assessment Report) at 149, 154–55.

exceed the requirements of Part VII.F, undertaking design and operational effectiveness testing of safeguards across Meta's Privacy Program. Part VII.F requires Meta to "[a]ssess, monitor, and test, at least once every twelve (12) months and promptly (not to exceed thirty (30) days) following the resolution of a Covered Incident, the effectiveness of any safeguards put in place pursuant to Part VII.E of this Order to address the risks to the privacy, confidentiality, or Integrity of Covered Information, and modify the Privacy Program based on the results."[245] Consistent with Part VII.F, in the first year of the Privacy Program, Meta undertook [redacted][246] [redacted][247] [redacted][248] [redacted][249] and completing testing for all requisite Program safeguards within the first twelve months of the Program.[250] Meta additionally conducted (and continues to conduct) targeted,

[245] Order, Part VII.F.

[246] *See* Ex. 30 (Jan. 21, 2022 resp. to Nov. 24, 2021 request 11) at 7.

[247] Ex. D (2023 Assessment Report) at 64; Ex. 7 (Dec. 3, 2021 resp. to October 14, 2021 request 17) at 3.

[248] *See* PFOF ¶ 903; Ex. 30 (Jan. 21, 2022 resp. to Nov. 24, 2021 request 11) at 8; Ex. D (2023 Assessment Report at 264.

[249] *See* PFOF ¶ 909; *infra* Section IV.J, Resp. to PFOF ¶¶ 897–909; Ex. D (2023 Assessment Report at 63–64.

[250] *See* Ex. 30 (Jan. 21, 2022 resp. to Nov. 24, 2021 request 11) at 7.

event-based Safeguard testing following each Covered Incident, employing the same rigorous testing methods.[251]

59. Going beyond the requirements of Part VII.F, Meta undertakes testing not only for safeguards implemented in connection with Part VII.E, but for the numerous additional processes Meta instituted as part of its comprehensive privacy program, [redacted][252] Meta also uses [redacted][253]

60. Though not specifically required under Part VII, Meta maintains a broader Compliance Monitoring, Enforcement and Reporting ("CMER") control domain, [redacted][254] [redacted][255] [redacted]

[251] *See* Ex. 4 (2021 Assessment Report) at 53–54; *see also* Ex. D (2023 Assessment Report) at 64.

[252] *See* Ex. D (2023 Assessment Report) at 46, 64.

[253] *Id.* at 63.

[254] Ex. 4 (2021 Assessment Report) at 51–52.

[255] Consistent with the organization of the 2023 Assessment Report, the OTSC's allegations regarding those processes are addressed in those respective sections.

[redacted][256]

[redacted][257]—just one example where Meta has expanded beyond the requirements of Part VII. Indeed, as the Assessor recognized in its Initial Assessment Report, the CMER domain is designed "to address both Order requirements"—like Part VII.F—"and industry standards."[258]

61. The OTSC makes no allegations regarding Meta's [redacted] or Meta's compliance regarding Part VII.F—indeed, the requirement to complete such testing had not yet even come due at the time of the Initial Assessment Report.[259] Nevertheless, Meta has continued to improve its [redacted] since the Initial Assessment. [redacted][260] [redacted][261]

[256] *See* Ex. 4 (2021 Assessment Report) at 52–53.

[257] *Id.* at 52.

[258] *Id.* at 51.

[259] *See* Order, Part VII.F; Ex. 4 (2021 Assessment Report at 54.

[260] *See* Ex. D (2023 Assessment Report) at 64; *infra* Section IV.J, Resp. to PFOF ¶¶ 897–916. *See generally* Ex. 70 [redacted].

[261] Ex. D (2023 Assessment Report) at 64, 71.

(j) Meta's Training Programs Exceed the Requirements of Part VII.G of the Order, are Effective, and are Continuously Improving

62. Meta designed and implemented comprehensive privacy trainings that meaningfully exceed Order requirements and which the Assessor characterized as [redacted].[262] Part VII.G of the Order requires Meta to "[e]stablish regular privacy training programs for all employees on at least an annual basis, updated to address any internal or external risks identified by [Meta] in Part VII.D of this Order and safeguards implemented pursuant to Part VII.E. of this Order, that includes training on the requirements of this Order."[263] Meta went beyond this requirement, implementing interactive privacy trainings that are required *company-wide*—not only for "all employees," as called for by the Order, but also for vendors and others with internal access to Meta's systems (collectively, "Meta personnel").[264] These include a recurring annual privacy training program for all Meta personnel and a new-hire privacy training program, collectively training over [redacted] Meta personnel as part of the 2020 training programs.[265] As the Assessor stated in its Initial Assessment Report, the trainings [redacted] and [redacted].[266] Meta's overwhelming success under Part VII.G is evidenced by a completion rate of over [redacted] for both the annual and new-hire training

[262] *See id.* at 9.

[263] Order, Part VII.G.

[264] *See* Ex. 30 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 2) at 3–4; Ex. 30 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 1) at 9 n.5; *infra* Section IV.H, Resp. to PFOF ¶¶ 759–61.

[265] Ex. 4 (2021 Assessment Report) at 2, 26.

[266] *Id.* at 26, 28.

programs relating to the Initial Assessment Period.[267] Going even further beyond Part VII.G's requirements, Meta also developed and provided numerous role-based trainings for specific groups and functions within Meta.[268]

63. The OTSC itself recognizes that "[t]o satisfy the Order's training requirement, [redacted][269]—that alone satisfies Meta's obligations under Part VII.G, and should be the end of the story.[270] If there were any doubt, the OTSC points to [redacted] Assessor findings that only underscore Meta's compliance with Part VII.G. First, the OTSC complains that [redacted] of Meta personnel completed the first annual training.[271] Yet nothing in the Order requires a 100% training rate.[272] And, regardless, many of these [redacted] Meta personnel were not even "employees" (as set forth in the Order), but vendors with no access to Covered Information.[273] [redacted][274] The OTSC next points to [redacted][275] Again, nothing in the Order prescribes any [redacted]

[267] *See* Ex. 30 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 1) at 9–10; Ex. 73 (Apr. 29, 2022 resp. to March 17, 2022 request 1) at 14.

[268] *See* Ex. 7 (Dec. 3, 2021 resp. to Oct. 1, 2021 request 10) at 28–31; Ex. 73 (Apr. 29, 2022 resp. to March 17, 2022 request 9) at 9–10; *infra* Section IV.H, Resp. to PFOF ¶¶ 786–92.

[269] *See* OTSC at 8.

[270] *See* Order, Part VII.G.

[271] *See id.*; Ex. 30 (Jan 21, 2022 resp. to Dec. 2, 2021 request 1) at 9.

[272] *See* Order, Part VII.G (requiring Meta to "[e]stablish regular privacy training programs for all employees . . . ." .

[273] *See* Ex. 30 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 1) at 9–10; *infra* Section IV.H, Resp. to PFOF ¶¶ 762–70.

[274] Ex. 73 (Apr. 29, 2022 resp. to Mar. 17, 2022 request 1) at 15.

[275] OTSC at 8.

[redacted]—as evidenced by the [redacted][276] And the suggestion that [redacted] is flatly wrong.[277] The Order does not require role-based training, which the Commission recognizes by seeking to add it as a requirement now.[278] And nowhere does the Commission or the Initial Assessment Report identify any harm to consumers arising from the Assessor's findings.

64. Meta has only continued to improve its training programs since the Initial Assessment.[279] As the Assessor acknowledged in its 2023 Assessment Report, Meta [redacted], leading the Assessor to conclude that [redacted][280] The Assessor also recognized [redacted][281] and characterized Meta's award-winning[282] trainings overall as [redacted][283] In short, Meta has further enhanced the robust, comprehensive training programs that it

[276] *See* Order, Part VII.G; Ex. 30 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 1) at 9–10; Ex. 73 (Apr. 29, 2022 resp. to March 17, 2022 request 1) at 14.

[277] *See* OTSC at 8; Order, Part VII.G.

[278] *See* Order, Part VII.G; Proposed Order, Part VIII.H.

[279] *See* Ex. D (2023 Assessment Report) at 42–43; *infra* Section IV.H, Resp. to PFOF ¶¶ 814–69.

[280] *See* Ex. D (2023 Assessment Report) at 42–43.

[281] *See id.* at 42.

[282] *See infra* Section IV.H, Resp. to PFOF ¶¶ 759–61.

[283] Ex. D (2023 Assessment Report) at 9.

established in 2020 at the Privacy Program's inception and which continue to exceed the requirements of Part VII.G.

(k) Meta's Service-Provider Safeguards within the TPRM Control Domain Exceed the Requirements of Part VII.H of the Order, are Effective, and are Continuously Improving

65. As part of Meta's expansive TPRM control domain—discussed in fuller detail *supra* at Section I.A.6.d—Meta implemented intensive processes to vet third-party service providers and ensure that those providers are contractually required to protect Covered Information, in addition to numerous other controls. Part VII.H of the Order requires Meta to "[s]elect and retain service providers capable of safeguarding Covered Information they receive from [Meta], and contractually require service providers to implement and maintain safeguards for Covered Information."[284] Going beyond the requirements of Part VII.H, Meta [redacted][285] Service providers undergo [redacted][286] [redacted]

[284] Order, Part VII.H.

[285] *See* Ex. 4 (2021 Assessment Report) at 136–37.

[286] *Id.*

[redacted][287] [redacted]

[redacted][288] Meta also went above and beyond the requirements of Part VII.H by implementing these requirements for service providers [redacted]

[redacted][289]

66. The OTSC makes no allegations regarding Meta's service-provider controls or Meta's compliance with any aspect of Part VII.H.[290] Nor could it, since there is no question from the Initial Assessment that Meta fully complied with Part VII.H and implemented effective service-provider controls.[291] Nonetheless, Meta has continued to enhance its service-provider controls since the Initial Assessment. For example, [redacted]

[287] *Id*. at 136.

[288] *Id*. at 136–37.

[289] PFOF ¶¶ 548–52; *see also infra* Section IV.D, Resp. to PFOF ¶¶ 542–52; Ex. 4 (2021 Assessment Report) at 158–59; Ex. 10 (Oct. 15, 2021 resp. to Sept. 1, 2021 request 8) at 4–6.

[290] *See* OTSC at 6.

[291] *See generally* Ex. 4 (2021 Assessment Report) at 134–62.

[redacted][92] Thus, Meta has only improved the already comprehensive controls that exceeded Part VII.H since their inception.

(l) Meta's Governance Domain Exceeds the Requirements of Parts VII.I and VII.J of the Order, is Effective, and is Continuously Improving

67. Meta's Governance Domain includes processes that not only fully satisfy Part VII.I and Part VII.J, but go beyond Order requirements to encompass activities that further the effective operation of the Privacy Program. As the Assessor recognized, Meta's "Governance activities play a crucial role in establishing and maintaining the [Privacy Program] and begin with the establishment of a tone-at-the-top" via the Board of Directors' oversight and Privacy Program leadership, in addition to other key functions.[293] These functions include consultation with independent experts to improve the Program (in satisfaction of Part VII.I) and an annual evaluation and adjustment process (in satisfaction of Part VII.J), as well as processes required nowhere in the Order—for example, [redacted][294]

(i) Meta Fully Complied with Part VII.I of the Order

68. Meta's consultations with independent, third-party experts more than satisfy the requirements of Part VII.I. Part VII.I requires Meta to "[c]onsult with, and seek appropriate guidance from, independent, third-party experts on data protection and privacy in the course of

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[292] Ex. D (2023 Assessment Report) at 192.

[293] *Id.* at 30. In addition to the functions discussed herein, the Governance domain also encompasses Meta's maintenance of [redacted] discussed with regard to Order, Part VII.A, *supra*.

[294] *See* Ex. 4 (2021 Assessment Report) at 21, 163; *see also* Ex. D (2023 Assessment Report) at 30–33; *infra* Section IV.M, Resp. to PFOF ¶¶ 1029–44.

establishing, implementing, maintaining, and updating the Privacy Program."[295] Since before the launch of the Privacy Program, Meta has consulted with experts [redacted][296] The Assessor recognized in the Initial Assessment Meta's efforts to "engage[] with independent privacy experts throughout the development and enhancement of the Privacy Program," and noted in the most recent Assessment that [redacted].[297] [redacted][298]

69. Nothing in the OTSC calls into question Meta's compliance with Part VII.I of the Order. The OTSC merely alleges that Meta [redacted]"[299] when nothing in Part VII.I requires Meta [redacted]. Nonetheless, as the Assessor recognized in its 2023 Assessment Report, Meta remediated the Assessor's finding through improved documentation and related quality-assurance processes.[300] In short, there is no question that Meta's engagements with external experts satisfied Part VII.I.

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[295] Order, Part VII.I.

[296] *See* Ex. 11 (Oct. 24, 2020 Compliance Report) at 13; *see also* Ex. 4 (2021 Assessment Report) at 22.

[297] Ex. 4 (2021 Assessment Report) at 22; Ex. D (2023 Assessment Report) at 33.

[298] Ex. D (2023 Assessment Report) at 33.

[299] OTSC at 10 (emphasis added).

[300] *See* Ex. D (2023 Assessment Report) at 36; *see also infra* Section VI.M, Resp. to PFOF ¶¶ 1045–58. Tellingly, the only other Governance finding from the Initial Assessment that the OTSC cites is similarly unrelated to any Order requirement. The OTSC notes that Meta's [redacted] OTSC at 10. [redacted] *See* Ex. 4 (2021

(ii) Meta Fully Complied with Part VII.J of the Order

70. Similarly, Meta's [redacted] fully satisfies Part VII.J. Part VII.J requires Meta to "evaluate the Privacy Program at least once every twelve (12) months" in light of "any material changes to [Meta]'s operations or business arrangements, a Covered Incident, new or more efficient technological or operational methods to control for the risks identified in Part VII.D. of this Order, and any other circumstances that [Meta] knows or has reason to believe may have a material impact on the effectiveness of the Privacy Program . . . and modify the Privacy Program as necessary based on the results."[301] Meta's [redacted] discussed *infra* .[302] The result of this process, [redacted][303]

71. The OTSC makes no mention of [redacted]—nor could it, since the first evaluation required by Part VII.J did not come due until months after the Initial Assessment.[304] Moreover, the 2023 Assessment Report confirms that Meta completed [redacted] during each 12-month period as required.[305] The 2023 Assessment Report also recognizes the

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Assessment Report) at 22. Nothing in Part VII requires [redacted]

[301] Order, Part VII.J.

[302] *See* Ex. D (2023 Assessment Report) at 32.

[303] *Id.*

[304] *See generally* OTSC.

[305] *See* Ex. D (2023 Assessment Report) at 32.

year-over-year improvements Meta made [redacted][306]

There is thus no question that Meta complied with Part VII.J.

(m) Meta Exceeded the Requirements of Part VII of the Order in Establishing a Data Life Cycle Management Domain, which is Effective and Continuously Improving

72. Even though nowhere mentioned in Part VII, Meta designed and implemented an extensive Data Life Cycle Management ("DLCM") domain dedicated to Meta's data management programs, including establishing standards for data deletion and the prevention of third-party access to deleted data, which the Assessor deemed to be overwhelmingly [redacted][307] Recognizing the core importance of data minimization, data deletion, and control over data access, Meta implemented numerous safeguards governing Meta's [redacted][308]

73. The OTSC nowhere alleges that Part VII requires Meta to implement a DLCM program, nor that Meta's practices in this regard were ineffective. On the contrary, while the OTSC alleges that Meta's DLCM safeguards [redacted]

[306] *Id.*

[307] *See* Ex. 4 (2021 Assessment Report) at 90, 93.

[308] *See id.* at 90–92; Ex. D (2023 Assessment Report) at 100–01.

[redacted] the OTSC fails to mention that these requirements sit under Part *III* of the Order, and that there is no allegation that Meta failed to satisfy Part III; the OTSC therefore effectively concedes that the gaps it cites have no bearing on Meta's compliance with Part VII. Moreover, the OTSC's allegations regarding DLCM focus exclusively on gaps related to a tiny percentage—[redacted]—of Meta's data assets [redacted][310] Indeed, the Commission could not identify gaps regarding the safeguards governing [redacted] which the Assessor concluded to be [redacted][311]

74. Further, the gaps the OTSC cites presented no meaningful privacy risk, [redacted] First, with respect to [redacted] (which the OTSC labels as one of the Assessor's "key findings in this area"),[312] the Assessor's finding was not that [redacted] Rather, the Assessor found that [redacted][313]

[309] *See* OTSC at 7.

[310] *See id.* at 7–8; Ex. 4 (2021 Assessment Report) at 91–92; *infra* Section IV.F, Resp. to PFOF ¶¶ 599–604. As discussed more fully in the 2023 Assessment Report and below, [redacted] *See infra* Section IV.F, Resp. to PFOF ¶¶ 599–604.

[311] *See* Ex. 4 (2021 Assessment Report) at 93.

[312] *See* OTSC at 8.

[313] *See* Ex. 4 (2021 Assessment Report) at 97; *infra* Section IV.F, Resp. to PFOF ¶¶ 620–22. [redacted] *See infra* Section IV.F, Resp. to PFOF ¶¶ 649–59, 671.

Second, the OTSC cites findings regarding [redacted][314] the controls for which were less expansive than for [redacted][315]—but ignores that Meta required [redacted][316] [redacted][317] [redacted][318] As the Assessor noted, "[redacted]."[319] Indeed, neither the Commission nor the Assessor identified a single instance [redacted][320]

75. Third, the OTSC cites [redacted][321]—but ignores the context suggesting that the impact of [redacted] was minimal, given that the Assessor also acknowledged [redacted][322] Finally, neither

[314] *See* OTSC at 8.

[315] *See* Ex. 4 (2021 Assessment Report) at 98–99.

[316] *See infra* Section IV.F, Resp. to PFOF ¶¶ 618–19, 662, 668, 673, 681.

[317] *See id.*

[318] *See id.* ¶¶ 662, 668, 681, 686, 688, 692–98.

[319] *See* Ex. 4 (2021 Assessment Report) at 98.

[320] *See* OTSC at 7–8; *infra* Section IV.F, Resp. to PFOF ¶¶ 668, 681.

[321] *See* OTSC at 8.

[322] *See* Ex. 4 (2021 Assessment Report) at 92, 97, 99; *infra* Section IV.F, Resp. to PFOF ¶ 678.

the Commission nor the Initial Assessment Report identify any harm to consumers arising from the Assessor's findings.[323]

76. Nevertheless, Meta has invested significant time and effort into continuing to improve its DLCM domain, including addressing the Assessor-identified gaps. The Assessor lauded Meta for its advancements in the 2023 Assessment Report, which speaks for itself regarding Meta's remediation activities and related advancements:

[redacted][324]

In short, Meta has continued to improve the expansive DLCM domain that it implemented despite no specific Part VII requirement to do so.

(n) Meta Exceeded the Requirements of Part VII of the Order in Establishing an Incident Management Domain, which is Effective and Continuously Improving

77. Even though nowhere mentioned in Part VII, Meta implemented a comprehensive Incident Management control domain that, according to the Assessor, achieved [redacted][325] Indeed, nothing in

[323] *See* Ex. 4 (2021 Assessment Report) at 93–94.

[324] Ex. D (2023 Assessment Report) at 100.

[325] Ex. 4 (2021 Assessment Report) at 109.

Part VII specifically requires dedicated incident management processes.[326] Yet Meta built an expansive Incident Management program, designing and implementing numerous safeguards dedicated to [redacted] and affirmatively choosing to go above and beyond the requirements of the Order.[327] Meta's Incident Management processes are [redacted], leveraging processes designed to [redacted][328] When Meta identifies [redacted][329] [redacted].[330]

78. Given that Part VII does not include a requirement for an Incident Management process, any gaps in this domain do not support the OTSC's claim that Meta failed to meet Part

[326] Part IX of the Order requires reporting of Covered Incidents, which sits outside of Part VII. *See* Order, Part IX. Part VII contains specific requirements related to post-Covered Incident risk assessments and safeguard testing, which are addressed by Meta's Risk Assessments and Remediation and Compliance Monitoring, Enforcement, and Reporting control domains. *See supra* Section I.A.6.b ¶¶ 28–31; *infra* Section I.A.6.i ¶¶ 58–61.

[327] Ex. D (2023 Assessment Report) at 121.

[328] *Id.* at 122–23; *see also infra* Section IV.E, Resp. to PFOF ¶¶ 587–93.

[329] *See* Ex. 4 (2021 Assessment Report) at 101–02; Ex. D (2023 Assessment Report) at 121–23.

[330] Ex. D (2023 Assessment Report) at 126; *see also infra* Section IV.E, Resp. to PFOF ¶¶ 587–93.

VII. Further, the OTSC nowhere even alleges that Meta's Incident Management processes were ineffective—nor could it, since the Assessor explicitly concluded in its Initial Assessment Report that [redacted][331] Instead, the OTSC points to "gaps"[332] that, upon even a cursory review of the facts, reveal edge cases that only affirm the effectiveness of Meta's Incident Management program. Specifically, [redacted][333] First, the OTSC alleges that Meta [redacted][334] Yet the OTSC omits that [redacted][335] Second, the OTSC cites [redacted][336] [redacted]

[331] Ex. 4 (2021 Assessment Report) at 109.

[332] *See* OTSC at 7.

[333] *See* PFOF ¶¶ 577–78, 580–83, 585–86, 594–95, 597–98.

[334] *See* OTSC at 7.

[335] *See infra* Section IV.E, Resp. to PFOF ¶¶ 577–78, 580–83.

[336] *See* OTSC at 7.

[redacted][337]

79. Third, the OTSC cites [redacted][338] again omitting that the sole Assessor-identified [redacted][339] Indeed, rather than recognizing [redacted], the OTSC instead focuses [redacted]. Fourth, the OTSC points to [redacted][340] [redacted][341]

80. Finally, in its subsection regarding Meta's CMER domain, the OTSC cites purported [redacted][342] which also sit within the Incident Management domain.[343] Yet while the

[337] Ex. 4 (2021 Assessment Report) at 113; *see also infra* Section IV.E, Resp. to PFOF ¶¶ 585–86.

[338] *See* OTSC at 7.

[339] *See* Ex. 4 (2021 Assessment Report) at 111; PFOF ¶¶ 587–95.

[340] *See* OTSC at 7.

[341] *See* Ex. 4 (2021 Assessment Report) at 112; *see also infra* Section IV.E, Resp. to PFOF ¶¶ 597–98.

[342] *See* OTSC at 9. For consistency with the 2023 Assessment Report and as noted *supra*, investigation of potential employee abuse incidents is discussed in the Incident Management domain.

[343] *See* Ex. D (2023 Assessment Report) at 124–25.

Assessor criticized limited instances [redacted] [344] And while the Assessor identified [redacted] [345] And nowhere does the Commission or the Initial Assessment Report identify any harm to consumers arising from the Assessor's findings. In short, the "gaps" that the OTSC points to are so minor that they only underscore the overwhelming effectiveness of Meta's Incident Management processes, which, in any event, are not required by Part VII.

81. Nevertheless, Meta has only continued to improve its Incident Management program since the Initial Assessment, including—as the Assessor recognized in its 2023 Assessment Report—implementing remediation plans to address the gaps identified by the Assessor.[346] This included, among other things, enhancing [redacted] [347] Meta has also established [redacted] [348] Meta has thus continued enhancing the expansive Incident Management program it implemented despite no specific Part VII requirement to have one.

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[344] *See* Ex. 76 (Apr. 15, 2022 resp. to Mar. 17, 2022 request 2) at 8; *see also infra* Section IV.J, Resp. to PFOF ¶¶ 923–35.

[345] Ex. 4 (2021 Assessment Report) at 61.

[346] *See* Ex. D (2023 Assessment Report) at 131–32.

[347] *See id.* at 132; *see also infra* Section IV.E, Resp. to PFOF ¶¶ 594–95.

[348] *See* Ex. D (2023 Assessment Report) at 124, 127 (noting, for example, the "integration between Cases and the PIM tool"); *see also infra* Section IV.E, Resp. to PFOF ¶¶ 577–78, 580–83.

(o) Meta Exceeded the Requirements of Part VII of the Order in Establishing a Complaints and Issue Management domain, which is Effective and Continuously Improving

82. Even though nowhere mentioned in Part VII, Meta implemented a control domain dedicated specifically to Complaints and Issue Management, [redacted] [349] As with many Privacy Program processes, each of these functions helps Meta continuously improve its Privacy Program and privacy practices more broadly. [redacted] [350] Similarly, Meta's [redacted] [351]

83. Given that Part VII does not include a requirement for Complaints and Issue Management processes, any gaps in this domain do not support the OTSC's claim that Meta failed to meet the requirements of Part VII. Further, the OTSC nowhere even alleges that Meta's Complaints and Issue Management processes were ineffective. Rather, in a subsection entitled

[349] *See generally* Ex. 4 (2021 Assessment Report) at 31–34.

[350] *See*, *e.g.*, *id.* at 31, 33.

[351] *See* Ex. 4 (2021 Assessment Report) at 33–34, 39.

"[redacted]," the OTSC [redacted][352] [redacted] And the OTSC makes no allegations at all about Meta's [redacted][353] With respect to [redacted], the Assessor's relevant findings were that [redacted][354] Yet the Assessor also acknowledged that the [redacted][355] [redacted][356]

84. With respect to [redacted], the Assessor's relevant finding was that [redacted][357] None of these findings, which are focused on documentation issues rather than underlying processes, provides a basis to conclude that Meta's complaints processes were ineffective, much less that Meta failed to satisfy the Order. Indeed, Part VII does not specifically require Meta to maintain *any* processes dedicated to complaints or

[352] OTSC at 10.

[353] *See generally* OTSC.

[354] *See* Ex. 4 (2021 Assessment Report) at 36–37; *infra* Section IV.L, Resp. to PFOF ¶¶ 985–1005.

[355] *See* Ex. 4 (2021 Assessment Report) at 37.

[356] *See* Ex. D (2023 Assessment Report) at 48–49.

[357] *See* Ex. 4 (2021 Assessment Report) at 38; *infra* Section IV.L, Resp. to PFOF ¶¶ 1013–20.

issue management. Meta did so proactively in furtherance of its development of a Program that exceeds Part VII's requirements. Moreover, and in any event, the Assessor found that Meta had successfully [redacted][358] and neither the Commission nor the Initial Assessment Report identify any harm to consumers arising from the Assessor's findings.

85. Despite the limited identified gaps, Meta has continued to improve its Complaints and Issue Management processes since the Initial Assessment Report, including addressing all of the Assessor's findings. For example, for [redacted], Meta [redacted][359] These enhancements caused the [redacted][360] As a result, the Assessor confirmed that Meta addressed the gaps identified in its Initial Assessment, stating that Meta's actions [redacted][361] Meta has thus continued improving the Complaints and Issue Management domain it implemented despite no specific Part VII requirement to have one.

[358] *See* Ex. 4 (2021 Assessment Report) at 36.

[359] *See* Ex. D (2023 Assessment Report) at 45–46, 49.

[360] *See id.* at 45.

[361] *See id.* at 49.

(p) Meta Exceeded the Requirements of Part VII of the Order in Establishing a Transparency, Notice and Choice Control Domain, which is Effective and Continuously Improving

86. Even though nowhere mentioned in Part VII, Meta implemented a comprehensive Transparency, Notice and Choice ("TNC") control domain that meaningfully exceeds Order requirements and is designed to ensure that Meta accurately and transparently explains its data practices to users.[362] Indeed, nothing in Part VII specifically requires Meta's TNC functions,[363] which include robust processes dedicated to [redacted][364]

87. Given that Part VII does not include a requirement for any of the processes within the TNC domain, any gaps in this domain do not support the OTSC's claim that Meta failed to meet Part VII. Further, the OTSC nowhere even alleges that Meta's TNC processes were ineffective.[365] Indeed, contrary to the OTSC's insinuation in alleging that the Assessor identified gaps in [redacted] of the domain,[366] most of the safeguards within the domain passed

[362] *See* Ex. 4 (2021 Assessment Report) at 123; Ex. D (2023 Assessment Report) at 148.

[363] Certain aspects of the TNC domain facilitate Meta's compliance with other sections of the Order, such as Parts I and IV. *See infra* Section IV.I, Resp. to PFOF ¶¶ 877–78, 882–87. The OTSC does not suggest that the Assessor's findings had any bearing on Meta's compliance with these other provisions. *See* OTSC at 8–9.

[364] *See* Ex. 4 (2021 Assessment Report) at 123–25. Meta previously maintained safeguards addressing Facial Recognition Templates within the TNC domain, which ensured compliance with Part VII.E.5. *See supra* Section I.A.6.h ¶ 57. As discussed in that section, Meta no longer maintains Facial Recognition Templates. *See supra id*.

[365] *See* OTSC at 8–9.

[366] *Id.* at 9.

multiple rounds of testing with no identified gaps.[367] Moreover, the OTSC omits key context about the gaps in these areas and their lack of impact. For example, with respect to [redacted][368] the OTSC alleges that Meta [redacted][369] Yet with respect to [redacted][370] Regarding Meta's [redacted]—an affirmative undertaking by Meta not required under Part VII or any other section of the Order—is necessarily an iterative process.[371] Nor do any of these gaps suggest that Meta made inaccurate statements to users.[372]

88. Many of the other gaps consisted primarily of opportunities to improve Meta's internal documentation, none of which are required by the Order. For example, the OTSC cites instances where [redacted]

[367] *See* Ex. 4 (2021 Assessment Report) at 128.

[368] *See id.* at 129–30, 230; *infra* Section IV.I, Resp. to PFOF ¶ 880.

[369] OTSC at 9.

[370] *See* Ex. 4 (2021 Assessment Report) at 130; *infra* Section IV.I, Resp. to PFOF ¶ 880.

[371] *See infra* Section IV.I, Resp. to PFOF ¶¶ 879–80.

[372] *See* Ex. 4 (2021 Assessment Report) at 129–30. The purported misrepresentations the Commission alleges in other parts of its OTSC, *see* OTSC at 10–11, predate the Privacy Program entirely, and bear no relation to the instant processes.

[redacted][373] Moreover, the OTSC ignores that Meta addressed [redacted] [redacted][374] Similarly, the OTSC vaguely cites "gaps and weaknesses [redacted][375] omitting that [redacted] [redacted][376]

89. Finally, with respect to [redacted] [redacted][377] The Commission omits key context around these findings, including [redacted] [redacted][378] Moreover, there were no instances where the Assessor found [redacted] [redacted][379] Indeed, nowhere does the Commission or Initial Assessment Report identify any harm to consumers arising from the Assessor's findings regarding the TNC domain.[380]

[373] *See* OTSC at 9; *infra* Section IV.I, Resp. to PFOF ¶¶ 872–76.

[374] *See* Ex. 6 (Nov. 19, 2021 resp. to Aug. 19, 2021 request 18) at 7–8; *infra* Section IV.I, Resp.to PFOF ¶¶ 872–76.

[375] OTSC at 9.

[376] *See* Ex. 4 (2021 Assessment Report) at 133; *infra* Section IV.I, Resp. to PFOF ¶¶ 894–96.

[377] *See* Ex. 4 (2021 Assessment Report) at 130–32; *infra* Section IV.I, Resp. to PFOF ¶¶ 888–93.

[378] *See* Ex. 6 (Nov. 19, 2021 resp. to Aug. 19, 2021 request 16) at 4–7; *infra* Section IV.I, Resp. to PFOF ¶¶ 888–89.

[379] *See* Ex. 4 (2021 Assessment Report) at 130–32; *infra* Section IV.I, Resp. to PFOF ¶¶ 888–90.

[380] *See* OTSC at 8–9; Ex. 4 (2021 Assessment Report) at 128–33.

90. Nevertheless, Meta has continued to enhance its processes across the TNC domain since the Initial Assessment. As the Assessor recognized in its 2023 Assessment Report, Meta [redacted][381] For instance, Meta enhanced [redacted][382] Meta also revamped [redacted][383] And Meta has been continuously improving [redacted][384] Meta has thus continued enhancing the TNC domain it implemented despite no specific Part VII requirement to have one.

(q) Meta Exceeded the Requirements of Part VII of the Order in Establishing an Internal Policies and Procedures Control Domain, which is Effective and Continuously Improving

91. Even though nowhere mentioned in Part VII, Meta designed and implemented an entire control domain dedicated to Internal Policies and Procedures ("IPP"), which ensures that Meta maintains [redacted]

[381] Ex. D (2023 Assessment Report) at 156.

[382] *See id.* at 157.

[383] *See id.* at 158; *infra* Section IV.I, Resp. to PFOF ¶¶ 872–76.

[384] Ex. D (2023 Assessment Report) at 157; *see also infra* Section IV.I, Resp. to PFOF ¶¶ 888–93.

[redacted][385] Meta implemented the IPP domain even though Part VII contains no general documentation requirements—it requires only the documentation of narrow categories of information, such as documentation of specific aspects of the Program discussed *supra* under Part VII.A) or documentation of privacy review decisions (discussed *supra* under Part VII.E.2), none of which the OTSC or the Initial Assessment Report call into question.

92. Going well beyond Part VII's requirements, Meta undertook an intensive effort to establish governing documentation across its entire Program. As the Assessor noted, in response to the Order, Meta "[redacted]"[386] This entailed publishing over [redacted] individual documents, including over [redacted] Program governing documents and [redacted][387] These include, among other things, a company-wide Internal Privacy Policy [redacted][388]

93. The OTSC nowhere alleges that Meta is required to maintain documentation or evidence beyond the discrete categories set forth in Part VII, much less that [redacted] The OTSC merely points to [redacted]

[385] *See* Ex. 4 (2021 Assessment Report) at 15–16; Ex. D (2023 Assessment Report) at 25–26.

[386] Ex. 4 (2021 Assessment Report) at 15 (emphasis added).

[387] *See id.*

[388] *See id.* at 16; Ex. D (2023 Assessment Report) at 25–26

[redacted][389] Yet the idea that [redacted] could possibly contribute to a finding that the Program was ineffective or fell short of Part VII requirements is absurd. Indeed, [redacted][390] [redacted][391] More broadly, the "gaps" associated with Meta's documentation and evidence were so minor that the Assessor did not even articulate many of them in the Initial Assessment Report[392]—[redacted][393] Finally, neither the Commission nor the Initial Assessment Report identified any harm to consumers in connection with the Assessor's findings—nor could they.

94. In spite of all this, Meta has continuously improved its [redacted][394] [redacted]

[389] OTSC at 9.

[390] *See, e.g.*, *infra* Section IV.K, Resp. to PFOF ¶¶ 960(a , 973(b).

[391] *See* PFOF ¶¶ 959–64.

[392] *See* Ex. 4 (2021 Assessment Report) at 18–19.

[393] *See* PFOF ¶ 961(a); *infra* Section IV.K, Resp. to PFOF ¶ 961(a).

[394] *See infra* Section IV.K, Resp. to PFOF ¶¶ 959–64, 970–75.

[redacted][395] [redacted]

[redacted]

[redacted]

[redacted]

[redacted][396] Meta also rolled out enhancements at the domain level, [redacted]

[redacted][397] Meta has thus continued to enhance its [redacted] despite no specific Part VII requirement to have one in the first place.

II. 90-DAY LIMITATION FOR THIRD-PARTY APPS

A. Meta Discovered, Disclosed, and Remediated the Expiration Check Coding Oversight

95. In April 2018, a full two years before the 2020 Order took effect, Meta voluntarily developed and introduced a prophylactic check—the 90-Day Limitation—that was designed to block an app from obtaining certain data about users if, based on signals available to Meta, they had not been active in the app for 90 days. This check was added to the existing set of controls and protections that were already in place for users, and what follows in this section concerns relevant aspects of Meta's products and services as they existed years ago, not necessarily today.

[395] *See id.* ¶ 972; Ex. D (2023 Assessment Report) at 28.

[396] *See* Ex. D (2023 Assessment Report) at 28.

[397] *See id.*; *infra* Section IV.K, Resp. to PFOF ¶¶ 976–78.

1. Meta's Facebook Login and Third-Party Apps

96. At the time the 90-Day Limitation was developed and rolled out, Meta maintained a service called Facebook Login, which allowed users to authenticate into third-party applications ("apps") using their Facebook login credentials.[398]

97. Facebook Login could also be used by app developers to integrate their apps with Facebook, in order to support various social features and other functionalities on their apps.[399]

98. For example, an app could request a user's birthday listed on their Facebook profile to provide age-relevant content to the app user.[400]

99. In order to support such integrations, Facebook Login enabled apps to access information from a user's Facebook account, with the user's consent (although as Meta disclosed to users and developers, certain information, including the user's name and profile picture, was public and available to the developer (and others) by default).[401]

100. Meta provided users "granular control" over the app's permissions to access information from a user's Facebook account, allowing them to choose which particular categories of information they were willing to share with a particular app.[402]

101. For example, an app might have requested access to:

a. The user's birthday

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[398] PFOF ¶ 1075.

[399] Ex. 62 (Facebook Login Overview, https://developers.facebook.com/docs/facebook-login/overview/) last visited Mar. 14, 2024).

[400] *See id.; Permissions Reference for Meta Technologies APIs*, Meta for Developers, https://developers.facebook.com/docs/permissions/reference/user_birthday/ (last visited Mar. 14, 2024).

[401] *See Manually Build a Login Flow*, Meta for Developers, https://developers.facebook.com/docs/facebook-login/guides/advanced/manual-flow/ (last visited Mar. 14, 2024 .

[402] *See id.*; *Introducing Anonymous Login and an Updated Facebook Login*, Meta, https://about.fb.com/news/2014/04/f8-introducing-anonymous-login-and-an-updated-facebook-login/ (Apr. 30, 2014).

b. The user's public profile, which included their name and profile picture.[403]

102. If the user of the app did not wish to share their birthday, the user could decline to share that information.[404] The user's public profile information was the bare minimum information provided to the app to identify the user, so that category of information could not be deselected in the permissions flow.[405] If the user did not wish to share this information they could simply decline to use Facebook Login in connection with the app.

103. Meta announced the launch of granular permissions as part of Facebook Login at its annual "F8" conference—a conference for developers of apps and other products designed to integrate with Meta products—on April 30, 2014, and began to roll out the granular controls over the following months.[406]

104. Meta announced certain other privacy features on the Facebook platform at the 2014 F8 Conference:

a. Meta announced that, going forward, apps would need to receive approval from Meta before asking users for permission to access any category of data from their account other than a user's public profile, friends list, and/or email address.[407] This approval process, called "Login Review" (now "App Review"), required the app developer to provide an explanation for how the app planned to use the

[403] *See Manually Build a Login Flow*, Meta for Developers, https://developers.facebook.com/docs/facebook-login/guides/advanced/manual-flow/ (last visited Mar. 14, 2024 .

[404] *Id*.

[405] *See id.*; *Permissions Reference for Meta Technologies APIs*, Meta for Developers, https://developers.facebook.com/docs/permissions/reference/public_profile (last visited Mar. 14, 2024).

[406] *See Introducing Anonymous Login and an Updated Facebook Login*, Meta, https://about.fb.com/news/2014/04/f8-introducing-anonymous-login-and-an-updated-facebook-login/ (Apr. 30, 2014).

[407] As of April 4, 2018, friends list is no longer available unless the app has gone through App Review. *See Facebook Platform Changes in Development*, Meta, https://developers.facebook.com/blog/post/2018/03/26/facebook-platform-changes/ Mar. 26, 2018).

category of data requested.[408] Only apps that Meta approved following this review were then able to request non-public Facebook user data.[409]

b. In addition, Meta announced that an app would no longer be able to ask for information that a user's friend had shared with them unless the friend was also a user of the app and had authorized the app to access their information.[410] It was the ability for developers to access information that a user's friends had shared with the user, even if those friends were not users of the app, that enabled a Cambridge University researcher, Aleksandr Kogan, to obtain data on users that he later shared with Cambridge Analytica.

105. The primary technical process through which apps access Facebook user data is Meta's Graph Application Programming Interface ("Graph API").[411]

106. When a user connected with an app using Facebook Login and approved the request for permission, the app generated an access token that provided temporary access to the Graph API.[412]

107. Meta required the app to provide this access token any time the app called the Graph API to read (i.e., obtain a copy of) a specific user's Facebook data on their behalf.[413]

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[408] *See The New Facebook Login and Graph API 2.0*, Meta, https://developers.facebook.com/blog/post/2014/04/30/the-new-facebook-login/ (Apr. 30, 2014).

[409] *See Submitting for Review*, Meta for Developers, https://developers.facebook.com/docs/app-review/submission-guide (last visited Mar. 14, 2024).

[410] *The New Facebook Login and Graph API 2.0*, Meta, https://developers.facebook.com/blog/post/2014/04/30/the-new-facebook-login/ (Apr. 30, 2014).

[411] *Overview - Graph API*, Meta for Developers, https://developers.facebook.com/docs/graph-api/overview (last visited Mar. 14, 2024).

[412] *Access Tokens for Meta Technologies*, Meta for Developers, https://developers.facebook.com/docs/facebook-login/guides/access-tokens (last visited Mar. 14, 2024).

[413] *Id*.

108. The access token specified which app generated the token, the user to whom the token applied, when the token would expire, and the access to which the app was entitled.[414]

109. The token was typically stored along with the app on the user's mobile device (although it could also be stored on the app's servers), and the app could then use the token to make API requests on the user's behalf.[415]

110. In order to use Facebook, including to integrate apps using Facebook Login, a user has always had to accept Meta's Terms of Service.[416]

111. Meta's Terms of Service in operation at the relevant time and today) state that Meta cannot guarantee "error-free" products, or that products "will function without disruptions, delays, or imperfections."[417]

2. Meta Announces Plans for the 90-Day Limitation

112. In March 2018, reports surfaced that Kogan had shared the data he obtained from Facebook users with Cambridge Analytica.[418]

113. Meta had already banned Kogan and Cambridge Analytica from Facebook in 2015 when it learned that Kogan had shared his app's data with Cambridge Analytica.[419] Meta also obtained written certifications from Kogan and Cambridge Analytica that they had deleted all improperly acquired data.[420]

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[414] *Id*.

[415] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook at 6.

[416] *Facebook Terms and Policies*, Meta, https://www.facebook.com/policies_center ("Terms of Service…Terms you agree to when you use Facebook" last visited Mar. 14, 2024).

[417] *Terms of Service*, Facebook, http://web.archive.org/web/20200616003514/https://www.facebook.com/legal/terms/ (July 31, 2019); *see also Terms of Service*, Facebook, https://www.facebook.com/legal/terms (July 26, 2022 .

[418] Ex. 66 (Mar. 21, 2018 Newsroom Post).

[419] *Id*.

[420] *Id*.

114. In addition, as discussed at Paragraph 104 above, Meta had already announced in 2014 that it was cutting off the ability for apps to request information from a user that the user's friend had shared with the user.[421]

115. Even though this prearranged change would prevent future apps from obtaining data as Kogan had, Meta convened subject-matter experts for the Facebook app developer platform to identify additional, prophylactic measures the company could take to enhance the security of user data on Facebook.[422]

116. Through this process, Meta decided to terminate an app's permission to request new data about the user if, based on signals available to Meta, the user had not used the app within the prior 90 days.[423] This measure, the "90-Day Limitation," was one of several supplemental controls developed by Meta in response to the Cambridge Analytica reports.[424]

117. A March 21, 2018 Facebook Newsroom post announced the 90-Day Limitation, describing it as a way to "[t]urn off access for unused apps. If someone hasn't used an app within the last three months, we will turn off the app's access to their information."[425] The post described this as a change made "to prevent abuse" as part of a "a higher standard for how

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[421] *See The New Facebook Login and Graph API 2.0*, Meta for Developers, https://developers.facebook.com/blog/post/2014/04/30/the-new-facebook-login/ (Apr. 30, 2014).

[422] Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr.) at 22:3–5, 23:19–25, 24:1–2.

[423] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook at 6.

[424] PFOF ¶ 1069; Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 4. For example, Meta also enhanced its App Review process: *Facebook's Enhanced Developer App Review and Graph API 3.0 Now Live*, Meta for Developers, https://developers.facebook.com/blog/post/2018/05/01/enhanced-developer-app-review-and-graph-api-3.0-now-live/ (May 1, 2018).

[425] *See Cracking Down on Platform Abuse*, Meta for Developers, https://about.fb.com/news/2018/03/cracking-down-on-platform-abuse/ (Mar. 21, 2018).

developers build on Facebook, what people should expect from them, and, most importantly, from us."[426]

118. Meta followed Mark Zuckerberg's announcement with an April 4, 2018, blog post by its then-Chief Technology Officer, Mike Schroepfer, announcing that the 90-Day Limitation would launch "in the next week" to "remove a developer's ability to request data people shared with them if it appears they have not used the app in the last 3 months."[427]

3. Meta Develops and Launches the 90-Day Limitation Functionality

119. Meta began developing the 90-Day Limitation in March 2018.[428]

120. Meta did not set a specific timeline to complete development, but considered implementing the 90-Day Limitation a high priority.[429]

121. Meta hoped to implement the 90-Day Limitation in advance of its 2018 F8 developer conference on May 1, 2018, as that conference brought Facebook developers together in one place and would therefore be a convenient venue in which to communicate the 90-Day Limitation.[430]

122. Because the 90-Day Limitation would apply to every interaction between a user and an app, employees working on the project viewed it as a significant change to the Facebook app ecosystem.[431]

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[426] Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr.) at 30:17–33:13 (referencing the post); *see also* PFOF ¶¶ 1069–70.

[427] Ex. 61 (July 14, 2020 resp. to FTC demand) at 2; *see also* PFOF ¶ 1072.

[428] Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr.) at 39:2–17, 40:1–19.

[429] *Id.* at 117:7–118:11, 132:8–10; Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 5. Since the "conference collect[ed] all developers in one place," it was convenient for the developers to collectively review the changes and discuss next steps. Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr.) at 122:14–123:1.

[430] Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr.) at 122:14–123:1.

[431] *Id.* at 71:10–72:23, 202–04.

123. Meta took a number of steps designed to ensure an efficient, successful launch.

124. First, Meta dedicated at least a dozen engineers to develop the 90-Day Limitation, more than doubling the maximum engineering headcount contemplated at that time for Facebook's Login team.[432]

125. Second, as discussed *infra* Paragraphs 129–137, Meta initially designed the code to be intentionally overbroad in how it identified an app as expired, i.e., the signals used to determine that an app had not been used by the user in the prior three months.

126. Third, Meta's development process involved multiple layers of review and testing both before and after launch. These included:

a. Designating a team to test third-party apps with Facebook Login to simulate the activation of the 90-Day Limitation and determine its effects.[433]

b. Requiring that any code change be reviewed by an engineer different from the author of the change before launching the code. The 90-Day Limitation code was reviewed by multiple such reviewers.[434]

c. Deploying automated systems that test code for known security vulnerabilities before it is launched, which assessed the code for the 90-Day Limitation.[435]

d. Maintaining an industry-leading bug bounty program, in which thousands of security researchers participate and are incentivized to find security or privacy risks in Meta features.[436]

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[432] *Id.* at 119:12–15, 124:6–13.

[433] *See* Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr.) at 73:20–75:4, 75:20–76:8, 78:11–22, 79:17–80:19.

[434] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook at 8.

[435] *Id.*

[436] Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr.) at 190:2–192:2; Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 8–9.

127. Fourth, Meta launched the 90-Day Limitation in several phases, starting on April 11, 2018, and continuing through late May 2018.[437]

128. As part of the launch, Meta updated its relevant policies and settings, including:

a. On April 18, 2018, Meta updated its Data Policy as follows: "We are in the process of restricting developers' data access even further to help prevent abuse. For example, we will remove developers' access to your Facebook and Instagram data if you haven't used their app in 3 months."[438]

b. Additionally, Meta added guidance to Facebook's Help Center explaining that apps would be deemed "expired" if "it appears you haven't been active for more than 90 days," with the result that the apps "may still have access to info you previously shared, but their ability to make additional requests for private info has expired."[439]

c. Meta modified language in the desktop and mobile versions of the Apps and Websites settings as well. The language clarified that certain apps were "expired apps," which meant that at most, they could request limited information about users.[440]

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[437] Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr.) at 41:1–44:25, 68:10–71:9 (The engineering work, which was only one phase of the process, "began on March 30th of 2018 and concluded on May 28th of 2018."); PFOF ¶¶ 1123, 1134 (containing part of Totherow's statements); Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 5; Ex. 61 (July 14, 2020 resp. to FTC demand) at 3.

[438] Ex. 33 (Facebook Data Policy, revised as of April 19, 2018) at FB-FTC-EXPAPPS-00000014; Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 5; Ex. 61 (July 14, 2020 resp. to FTC demand) at 1.

[439] Ex. 32 (Facebook Help Center: "How long do apps and games have access to my information?") at FB-FTC-EXPAPPS-000000009; Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 5; Ex. 61 (July 14, 2020 resp. to FTC demand) at 1.

[440] Ex. 61 (July 14, 2020 resp. to FTC demand) at 1 (describing the specific updated language at relevant time periods .

4. Meta's 90-Day Limitation Functionality

129. The 90-Day Limitation works by proactively blocking an app from obtaining any additional nonpublic data about a user where it appears the user has not used the app in the prior 90 days.[441]

130. Meta implemented the feature by creating a check (the "Expiration Check") in the code that runs whenever an app requests data on behalf of a user through Facebook's Graph API.[442]

131. The Expiration Check was programmed to evaluate whether the user access token submitted by the app was from a user that had been active in the app within the prior 90 days.[443]

132. If the user was deemed to have been inactive throughout this 90-day period, the Expiration Check was programmed to return an "expired" status for the user, preventing the app from continuing to access data about the user.[444]

133. Meta coded the Expiration Check so that a user was deemed inactive by default after 90 days unless Facebook code could detect certain strongly trusted signals of user activity (i.e., signals providing a high degree of confidence that genuine user activity had occurred within the prior 90 days), such as a login to the app through Facebook Login.[445]

134. Although many actions by an app on Facebook's Graph API could potentially be taken to indicate user activity in the app, some actions are easier than others for an app to

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[441] Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr.) at 35:4–36:20; Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 2, 5; PFOF ¶¶ 1071–73; Ex. 61 (July 14, 2020 resp. to FTC demand) at 2.

[442] Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr.) at 73:15–19; Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 5–6; Ex. 61 (July 14, 2020 resp. to FTC demand) at 3.

[443] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 6; Ex. 61 (July 14, 2020 resp. to FTC demand) at 3.

[444] *Id.*

[445] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook at 6.

emulate, so as to appear as if they reflect actual user activity even though they are actually being taken by the app without the user's involvement.[446]

135. To account for this, Meta coded the 90-Day Limitation to treat a user as inactive by default unless the user had expressly logged into the app within the prior 90 days, knowing that the result would be that users would sometimes inadvertently be deemed inactive as a result of the Expiration Check despite having used the app within the prior 90 days.[447]

136. This inadvertent inactive designation would occur where a user genuinely used an app without triggering the trusted signals the Expiration Check relied upon (e.g., without logging into the app). A user misidentified as inactive would have to reauthorize the app's access to their data by going through the Facebook Login flow. Meta accepted this risk in order to err on the side of effectively enforcing a strong 90-Day Limitation.[448]

137. After Meta launched the 90-Day Limitation, it continued to review and improve the functionality, including refining the signals it used to determine whether a user was active on an app. These refinements did not alter the efficacy of the control.[449]

138. In implementing the Expiration Check, the engineering team focused on the access token of the user on whose behalf the information was being requested. In the vast majority of instances, this would also be the access token of the user whose information was being sought, since apps typically request data about a given user on that user's behalf.[450]

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[446] *Id*.

[447] *Id.*

[448] *Id.*

[449] Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr.) at 202:10–206:24.

[450] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook at 7.

139. In limited circumstances, an app will use the access token of one user to request data about another user.[451]

140. For example:

a. An app may have a feature that allows one app user (App User A) to invite their Facebook friends who are the same age and who also use the app such as App User B) to join a game or other joint activity in the app.

b. To determine if App User B is the same age as App User A, the app may use App User A's token to request App User B's birthday.

c. As long as App User B has installed the app and separately granted permission to the app to access the birthday field (through the interface where a user can granularly approve such permissions), and as long as App User B's privacy settings on Facebook permit their birthday to be shared with App User A, the app may use App User A's access token to obtain App User B's birthday.

d. This is the most straightforward way for the app to obtain information about App User B on App User A's behalf.

e. Meta only returns the data if App User B's settings allow both the app and App User A to view it.[452]

141. The engineers inadvertently did not include code for this limited scenario as part of the Expiration Check hereafter (the "Coding Oversight").[453]

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[451] *Id.*; Ex. 61 (July 14, 2020 resp. to FTC demand) at 3.

[452] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 7; Ex. 61 (July 14, 2020 resp. to FTC demand) at 3.

[453] Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr.) at 52:11–53:10; 79:17–80:19; Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 8; *see also* Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr.) at 156:18–160:13 (articulating the number of circumstances necessary for oversight to manifest).

142. This meant that when an app requested an item of data about App User B on behalf of App User A (i.e., using App User A's token), the Expiration Check would check whether App User A was active before returning the data, but it would not also check whether App User B was active.[454]

5. Meta Promptly Investigates and Remediates the Coding Oversight

143. On June 16, 2020, a software engineer (who was working on general code improvements—i.e., refactoring) noticed the Coding Oversight.[455]

144. Meta followed its procedures to promptly investigate and remediate the Coding Oversight within a day after detection.[456]

145. On June 18, 2020, the engineer filed a "site event" report "SEV"), which is used within Facebook to flag a possible security or privacy incident.[457]

146. On June 19, 2020, the engineer modified the Expiration Check so that in the limited scenario described above, the Expiration Check would confirm the active status of both the user on behalf of whom the app is acting and the user whose data is being queried.[458]

147. Meta also promptly conducted a detailed review of API logs from the six months prior to the discovery of the Coding Oversight to identify any potential impact to users.[459]

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[454] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 7–8.

[455] *Id.* at 9; Ex. 61 (July 14, 2020 resp. to FTC demand) at 4.

[456] Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr.) at 153:3–155:13 ("A bug would be something that is a flaw in an existing piece of code so that it is not functioning as was intended by the person or persons who wrote it. An oversight is the absence of a piece of code or some sort of process deficiency that prevented something from being created in the first place . . . I would definitely categorize this as a coding oversight."); Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 3.

[457] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 9, n.8; Ex. 61 (July 14, 2020 resp. to FTC demand) at 4, 10.

[458] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 9; Ex. 61 (July 14, 2020 resp. to FTC demand) at 4, 10.

[459] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 10; Ex. 61 (July 14, 2020 resp. to FTC demand) at 4.

148. The Coding Oversight did not result in the sharing of a user's data contrary to a user's permissions for that app.[460]

a. The Coding Oversight only affected the Expiration Check—it did not affect any user's app permissions, which limit access to each of the user's data fields on an app-by-app basis.[461] It also did not affect any user's Facebook privacy settings, which limit access to each of the user's data fields on a user-by-user basis (including where an app is requesting a user's data on another user's behalf).[462]

b. The Coding Oversight had no impact on App User B's permission settings: Meta would only return the data requested if App User B had previously and expressly agreed to share the data with that app.[463]

c. Thus, regardless of the Coding Oversight, a particular app querying the data of a particular user could only access the requested data if (i) the user had previously granted the relevant app permission to access the field(s) being queried and (ii) the user's privacy settings allowed that data field to be shared with the user whose token was being used to request the data.[464]

[460] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 2, 3; Ex. 61 (July 14, 2020 resp. to FTC demand) at 4.

[461] Ex. 61 (July 14, 2020 resp. to FTC demand) at 4. Separate code is used to check whether user data requested by an app has been authorized by that user to be shared with the app, and that code was not affected by the Coding Oversight.

[462] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 10; Ex. 61 (July 14, 2020 resp. to FTC demand) at 4.

[463] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook at 8.

[464] *Id.* at 10.

149. Moreover, the overwhelming majority of the nonpublic user information queried as a result of the Coding Oversight was static in nature, consisting of fields of data that a user is unlikely to change over time (such as their birthday or hometown).[465]

150. Of the approximately 17.4 million users who had any form of nonpublic information queried as a result of the Coding Oversight, 15.8 million—nearly 90%—only had static data fields affected.[466]

151. Only approximately 1.6 million U.S. users—less than one percent of U.S. Facebook users overall at the time of the Coding Oversight —had any nonpublic data queried from fields that are not static by nature ("non-static fields").[467]

a. Within this small minority group, the number of non-static fields that were queried per user was very small: the average user among these 1.6 million users had only 1.14 non-static fields queried. Even then, all of that data was still subject to the permissions checks that ensured the users had, in fact, previously authorized the app to access the data field(s) in question.[468]

b. The non-static field queried most frequently as a result of the Coding Oversight was, by far, the "quotes" field, which, if populated, contains a user's favorite quotation(s) from books, movies, and so forth. Nearly all of the queries of this field were run by a single app, [redacted], which

[465] Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr.) at 185:2–6; Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 3, 11; Ex. 61 (July 14, 2020 resp. to FTC demand) at 5, 6.

[466] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 11; Ex. 61 (July 14, 2020 resp. to FTC demand) at 9.

[467] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 3; PFOF ¶ 1112.

[468] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook at 11.

likely accesses user quotes in order to identify favorite media of users and friends for purposes of making recommendations.[469]

c. Other non-static fields were queried for small pockets of users in a scattered fashion by other apps.[470]

152. In addition, Meta's review uncovered no indication that the Coding Oversight was intentionally abused by app developers to exploit the Coding Oversight.[471] For example:

a. Meta did not identify any instances of app developers using the Coding Oversight to collect larger quantities of data than they otherwise would have been able to.[472]

b. Specifically, had an app developer engaged in such practices, Meta would have expected a significant decrease in the frequency of app queries for data about a user's friends before and after the fix of the Coding Oversight as apps would no longer be able to obtain any data for expired users through such queries once the Coding Oversight was remediated.

c. In the nearly six months before the Coding Oversight was fixed on June 18, 2020, such queries constituted approximately 1.5% of API queries overall; and in the two months after the fix, such queries still constituted approximately 1.5% of API queries overall.

d. In other words, app behavior in this context stayed the same before and after the Coding Oversight was fixed, indicating that any collection of data relating to expired users prior to the fix was purely incidental.

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[469] *Id.* at 12, n.12.

[470] *Id.* at 13; Ex. 61 (July 14, 2020 resp. to FTC demand) at 5–9.

[471] Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr.) at 185:22–189:13; Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 12.

[472] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook at 12.

153. Furthermore, no bug bounty reports were ever submitted about the Coding Oversight, even though it was something that a bug bounty researcher would have been capable of looking for and detecting.[473]

154. Finally, no user complaints were ever received regarding the Expiration Check.[474]

6. Meta Voluntarily Discloses the Coding Oversight and Cooperates with the Commission

155. Meta's initial remediation efforts included prompt voluntary disclosure to various external parties.[475]

156. On June 29, 2020, Meta voluntarily disclosed the Coding Oversight to the Commission.[476]

157. On July 1, 2020, Meta voluntarily disclosed the Coding Oversight to the public.[477]

158. Meta cooperated fully with the Commission's extensive investigation into the Coding Oversight and Commission Staff ceased substantive inquiries about the matter over a year and a half ago.[478]

159. On June 30, 2020, the Commission sent a letter to Meta pursuant to Part XV of the Order requesting information about the Coding Oversight.

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[473] Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr.) at 190:2–192:2; Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 8–9.

[474] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook at 9.

[475] *Id.* at 2, 3.

[476] PFOF ¶ 1095; Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 9. This disclosure to the Commission was not required: given that the Coding Oversight did not involve any access to or collection of data in violation of Facebook's Platform Terms, it did not constitute a "Covered Incident" as defined in the Commission's 2019 consent order with Facebook (In the Matter of Facebook, Inc., Docket No. C-4365 (the "Order").

[477] PFOF ¶ 1097; Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 9. This disclosure, too, was not required by law because the Coding Oversight did not involve any data breach—i.e., there was no evidence that the Coding Oversight had been abused by any app or that it resulted in any data being provided to apps in violation of the permissions users had given to the apps—and thus it did not trigger any breach notification requirements.

[478] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 3, 10.

160. Thereafter, Meta submitted substantial amounts of information relating to the Coding Oversight through several written responses, dated July 14, July 29, and August 5, 2020.[479] Meta also made productions of custodial documents on September 28, October 19, November 17, and December 7, 2020, amounting to 11,258 pages in total and had numerous calls with Commission Staff.

161. Meta solicited Staff input on planned revisions to Facebook's Help Center guidance and the Data Policy to clarify the scope of the 90-Day Limitation.[480]

162. On May 28, 2021, the Commission sent Meta a letter requesting the names of individuals who had supervisory authority or responsibility over Facebook's development, implementation, and remediation of the Expiration Check.[481] Meta fully responded to this letter on June 11, 2021.[482]

163. The FTC conducted a Rule 30(b)(6) deposition of Eric Totherow on September 30, 2021. Mr. Totherow served as a technical program manager for the Facebook developer platform from March 2018 until September 2019. In that role, Mr. Totherow was responsible for helping the developer platform team solve technical issues in product development and coordinate with stakeholders across other parts of the company.[483]

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[479] Ex. 61 (July 14, 2020 resp. to FTC demand); Ex. G (Letter from M. Rubin to L. Kopp, In the Matter of Facebook, Inc., Docket No. C-4365 (Jul. 29, 2020); Ex. H (Letter from M. Rubin to L. Kopp, In the Matter of Facebook, Inc., Docket No. C-4365 (Aug. 5, 2020)).

[480] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook at 10.

[481] *See* Ex. K (Letter from L. Kopp to M. Rubin, In the Matter of Facebook, Inc., Docket No. C-4365 (May 28, 2021)).

[482] *See* Ex. L (Letter from M. Rubin to L. Kopp, In the Matter of Facebook, Inc., Docket No. C-4365 (Jun. 11, 2021)).

[483] Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr.) at 14:20–15:11; 19:9–20:1.

164. The Commission has not requested any substantive information regarding the Coding Oversight since 2021.[484]

III. MESSENGER KIDS

A. Meta Discovered, Disclosed, and Remediated Messenger Kids Technical Errors

165. In July 2019, prior to the FTC's filing of the complaint and stipulated order, Meta disclosed two technical errors to the FTC related to the Messenger Kids product. What follows in this section concerns relevant aspects of Meta's products and services as they existed at the time of those technical errors, not necessarily today.

1. Meta's Messenger Kids App

166. Messenger Kids is a messaging and video calling app built for children (i.e., persons under the age of 13). It was designed to provide a platform for children to connect with family and friends in a safe, parent-controlled environment.[485]

167. Messenger Kids launched on iOS devices in December 2017 and on Android devices in February 2018.[486]

168. Messenger Kids has always been free to use, offered child-specific functions and significant and customizable parental controls, and not generated revenue for Meta.[487]

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[484] Meta's last contact with the Commission regarding this matter was in March 2022 related to consent privilege determinations.

[485] Ex. 40 (Jan. 31, 2020 White Paper) at 2.

[486] *See* Ex. 38 (Nov. 15, 2019 resp. to CID) at 19.

[487] *See* Ex. 40 (Jan. 31, 2020 White Paper) at 2.

169. Messenger Kids has never contained any advertising, and identifiable information collected from Messenger Kids users has not been used to display targeted ads to users or their parents.[488]

170. Parents can monitor their child's activities on the app and customize privacy settings through a control panel in the parent's Facebook account (the "Parent Dashboard").[489] Parents also monitor their child's activity on the app through notifications, including when their child requests to add a contact, block a contact, or report content or a contact.[490]

2. Meta Obtains Verifiable Parental Consent from Parents of Messenger Kids Users

171. Since launch, Messenger Kids has obtained verifiable parental consent ("VPC") before collecting Personal Information from Messenger Kids users.[491]

172. During the VPC process, Messenger Kids provides notice to the parent regarding the information collected when the child uses the app. This screen also includes a link to the Messenger Kids Privacy Policy, which provides additional details about the Personal Information Messenger Kids collects from its users, how that information is used, and how that information is shared.[492]

173. The parent must affirmatively consent to the collection and use of their child's Personal Information during the VPC process. If the parent does not consent, then the parent cannot create a Messenger Kids account. The parental consent screen makes clear that by

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[488] *See, e.g.*, Erin Egan, *Privacy Matters: Messenger Kids*, Facebook, https://about.fb.com/news/2020/04/privacy-matters-messenger-kids/ (April 22, 2020); Meta, *Giving Parents Even More Control in Messenger Kids*, https://about.fb.com/news/2020/02/messenger-kids-controls/ (Feb. 4, 2020).

[489] Ex. 38 (Nov. 15, 2019 resp. to CID) at 2.

[490] *Id.* at 6.

[491] *Id.* at 10.

[492] *Id.* at 9.

tapping "Create Account," the parent consents to Messenger Kids' Terms of Service and Privacy Policy.[493]

174. Messenger Kids' Privacy Policy at all relevant times stated that Messenger Kids is designed to give parents control over how and when their child shares data and who they can communicate with.[494]

175. Messenger Kids' Terms of Service also stated at all relevant times that Meta "do[es] [its] best to keep Messenger Kids safe and [has] designed the Messenger Kids experience with safety front and center" but "cannot guarantee" that these efforts will always succeed.[495]

176. In order to use Facebook, all users–including parents of Messenger Kids users—must accept Meta's Terms of Service.[496]

177. Meta's Terms of Service in operation at all relevant times stated that Meta cannot guarantee "error-free" products, or that products "will function without disruptions, delays, or imperfections."[497]

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[493] *Id.* at 4.

[494] *Messenger Kids Privacy Policy*, Facebook, https://www.facebook.com/legal/messengerkids/privacypolicy?version=2020 (last modified Dec. 20, 2023); *see also* Messenger Kids Privacy Policy, Facebook (last modified Dec. 4, 2017) ("Messenger Kids is designed to help children connect and share with their family and friends in a controlled environment. It is also designed to allow parents and guardians to decide who may and may not interact with their child on Messenger Kids").

[495] *Messenger Kids Terms of Service,* Facebook, https://www.facebook.com/legal/messengerkids/terms (last modified Dec. 20, 2023).

[496] *Terms and Policies,* Meta, https://www.facebook.com/policies_center (last visited Mar. 14, 2024) ("Terms of Service. Terms you agree to when you use Facebook").

[497] *Facebook Terms of Service*, Facebook, http://web.archive.org/web/20200616003514/https://www.facebook.com/legal/terms/ (last updated July 31, 2019); *see also Facebook Terms of Service*, Facebook https://www.facebook.com/legal/terms (last updated July 26, 2022).

3. Meta Develops Messenger Kids

178. Meta created Messenger Kids to provide a safe and secure platform for children to connect with parent-approved contacts.[498]

179. The Messenger Kids product team ("Messenger Kids Team") was responsible for developing and implementing Messenger Kids. The team consisted of dozens of "strong," "senior" engineers.[499]

180. According to testimony from Messenger Kids' Engineering Director, the product was built following several guiding principles, developed following research sessions with parents and their children; these principles included making a product that is "safe and secure."[500]

181. To meet this guiding principle, engineers "deploy[ed] best practices in putting as many redundant checks as possible in [the] code base." The purpose of these redundant controls was to have "more than one point that could detect any failures in [the] system." Given the number of components working at once in a messaging app and the reality that you "can't capture every single scenario that exists," the Messenger Kids team wanted multiple layers of "checks and balances . . . in [the] code" to catch unexpected issues that might arise.[501]

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[498] *See* Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.) at 20:11–20, 108:5–23 (explaining that a key guiding principle for Messenger Kids was to be safe and secure and stating that the ability for Messenger Kids users to only communicate with approved contacts was a "core guiding aspect[] of the product").

[499] *Id.* at 84:16–85:6.

[500] *Id.* at 19:4–20:20, 122:15–123:6.

[501] *Id.* at 20:21–22:10.

182. The Messenger Kids Team designed Messenger Kids to ensure that users could only communicate with parent-approved contacts.[502] During product development, the Messenger Kids Team built overlapping controls specifically to achieve this purpose.[503]

183. These overlapping controls included user-facing ("client side") controls as well as back-end ("server-side") controls including the People-Picker Check and the Approved Contact Check.

184. The *People-Picker Check.* Meta designed Messenger Kids such that users could only select approved contacts to participate in a group chat. The Messenger Kids Team coded this control on the client side as part of the "people-picker" function where users select contacts for a chat.[504]

a. The people-picker includes only the child's list of parent-approved contacts.[505] When the MK user selects a contact from their contact list to create a group chat, the people-picker then grays out any remaining contacts who are not parent-approved contacts of the selected contact, so that these grayed-out contacts cannot be added to the chat.[506]

b. The Messenger Kids Team intended the People-Picker Check to work in a sequenced manner, meaning that one contact would have to be selected at a time, at which point it would be necessary to analyze the approval status of the

[502] *Id.* at 20:11–20, 108:5–23.

[503] *Id.* at 21:23–23:15; Ex. 38 (Nov. 15, 2019 resp. to CID) at 16; Ex. 40 (Jan. 31, 2020 White Paper) at 3.

[504] Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.) at 29:1–30:5, 110:10–112:3; Ex. 38 (Nov. 15, 2019 resp. to CID) at 16; Ex. 40 (Jan. 31, 2020 White Paper) at 3–4.

[505] *Id.*

[506] *Id.*

remaining contacts in the people-picker against the most recently selected contact.[507]

c. Experienced engineers therefore coded a "mutex" for the specific purpose of ensuring that contacts could be selected only sequentially and not simultaneously,[508] which would allow the People-Picker Check to run iteratively after the selection of each contact.[509]

d. The mutex code and People-Picker Check generally, like all Messenger Kids code, went through the standard product development controls, including mandatory peer review, and was determined to be coded correctly.[510]

185. *Approved Contact Check.* On the server side, the Messenger Kids Team designed Messenger Kids to run a check on all intended chat participants before allowing the chat to be created. This "Approved Contact Check" analyzes the parent-approval status of all intended participants to ensure that each is an approved contact of all other intended participants.[511] The Approved Contact Check prevents a user from creating a chat if any chat participant is not approved to communicate with any other intended participant. In other words, a chat is created when all participants are approved to communicate with one another.[512]

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[507] Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.) at 113:16–115:10; Ex. 40 (Jan. 31, 2020 White Paper) at 3–4.

[508] A "mutex" refers to a "mutual exclusion object," which is a programming element that acquires a lock on a certain program thread, thereby forcing the program to run threads in a sequence rather than simultaneously. *See* Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.) at 113:16–115:10.

[509] Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.) at 113:16–115:10; Ex. 40 (Jan. 31, 2020 White Paper) at 10.

[510] Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.) at 115:23–117:17; Ex. 40 (Jan. 31, 2020 White Paper) at 4.

[511] *See* Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.) at 23:19–25:12; Ex. 38 (Nov. 15, 2019 resp. to CID) at 19.

[512] *Id.;* Ex. 38 (Nov. 15, 2019 resp. to CID) at 19.

186. Both the People-Picker Check and the Approved Contact Check also prevent video calls with unapproved contacts.[513]

4. Pre-Launch Testing of Messenger Kids

187. The Messenger Kids Team did not develop the product on a specific timeline; instead, development was ongoing and focused on implementing a safe and secure product.[514] This included a multi-layered pre-launch testing process.[515]

188. In developing Messenger Kids, the Messenger Kids Team followed Meta's standard coding and review process.[516]

a. Product managers worked with teams of engineers to design and implement specific features of Messenger Kids.[517] All code underwent a peer review process, where engineers other than the engineer who wrote the piece of code would test the code on their own machines and provide feedback.[518] Once all feedback was resolved, peer reviewers would approve the code.[519]

189. The review process also included a robust, manual Quality Assurance ("QA") process to ensure the product functioned as intended.[520]

[513] Ex. 38 (Nov. 15, 2019 CID Response) at 16; Ex. 40 (Jan. 31, 2020 White Paper) at 4.

[514] Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.) at 83:11–21.

[515] *Id.* at 85:7–91:16; Ex. 40 (Jan. 31, 2020 White Paper) at 4.

[516] Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.) at 79:20–81:8.

[517] *Id.* at 59:4–15.

[518] *Id.* at 85:7–89:23.

[519] *Id.* at 85:12–86:7.

[520] *Id.* at 33:3–33:15, 91:6–23, 94:9–15; Ex. 40 (Jan. 31, 2020 White Paper) at 4.

190. The QA process involved the Messenger Kids Team and a team of contractors who tested the app to make sure it functioned as intended.[521] The Messenger Kids Team helped the contractors develop scenarios for the contractors to test the code's effectiveness i.e., try to break it). These scenarios were called "test plans," which outlined the sequence of steps that contractors tested on different devices.[522]

191. The Messenger Kids Team and contractors created various testing scenarios, including tests designed to verify that Messenger Kids users could not communicate with unapproved contacts.[523] They conducted the tests in a variety of scenarios: on multiple devices and operating systems with a range of specifications (e.g., a variety of screen sizes, system versions, speeds, etc.).[524]

192. They also tested how Messenger Kids interacted with corresponding apps, such as Messenger.[525]

193. For any issues identified during the QA process, an internal task was created for investigation and remediation by the Messenger Kids Team.[526] Over the course of the pre-launch QA process, engineers on the Messenger Kids Team opened and resolved hundreds of QA tasks.[527]

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[521] Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.) at 33:3–33:15, 91:6–23, 94:9–15; Ex. 40 (Jan. 31, 2020 White Paper) at 4.

[522] Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.) at 91:9–91:23, 93:25–97:16; Ex. 40 (Jan. 31, 2020 White Paper) at 4.

[523] *Id.*

[524] *Id.*

[525] Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.) at 99:3–103:3.

[526] Ex. 40 (Jan. 31, 2020 White Paper) at 4.

[527] *Id.*

194. The QA process continued after launch as well, and continued at all relevant times.[528]

195. Messenger Kids is subject to additional ongoing testing as well. Starting pre-development, research teams conduct "usability testing" where parents and children are invited to test Messenger Kids features and provide feedback.[529] This testing helps the Messenger Kids Team determine whether the product meets its initial goals of a safe and secure communication platform for children and their parent-approved contacts.[530]

5. Meta Promptly Detects, Investigates, and Remediates the Group Chat Technical Error

196. In June 2019, the Messenger Kids Team learned that under certain specific and limited circumstances, a Messenger Kids user could create a group chat with their parent-approved contacts even if those contacts were not approved to connect with each other (the "Group Chat Technical Error").[531]

197. The Group Chat Technical Error arose in a rare circumstance: (1) a Messenger Kids user created a group chat from an Android device, (2) that Messenger Kids user simultaneously selected more than one contact at the same time (initiating a race condition[532]

[528] *Id*

[529] Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.) at 103:11–21.

[530] *Id.* at 103:11–108:3.

[531] Ex. 40 (Jan. 31, 2020 White Paper) at 5.

[532] A "race condition" occurs when a device or system attempts to perform two or more operations at the same time, but because of the nature of the device or system, the operations must be done in a certain sequence to be done correctly.

bug), *and* (3) one or more of those simultaneously selected contacts were not approved to connect with each other.[533] [534]

198. When that happened, a Messenger Kids user could add their approved contacts to a group chat without the app checking whether those contacts were approved to chat with each other (an "Affected Group Chat"). This was caused in part by a code improvement project in June 2018 that inadvertently removed the Approved Contact Check for Android users as it applied to group chats.[535]

199. The Group Chat Technical Error affected only a limited number of users ("Affected Users"). Messenger Kid's controls otherwise worked as intended to prevent unapproved chats.[536]

200. Additional controls rendered the Affected Group Chats largely inaccessible to the Affected Users.[537]

a. The Messenger Kids Team coded Messenger Kids to only allow messages with approved contacts to appear in the inbox. This control kept the Affected Group Chats out of Affected Users' inboxes.

b. An Affected User could only have participated in an Affected Group Chat if they had "push" notifications enabled on their device, saw the chat notification, and pressed the notification to access the chat. If an Affected User did not enable

[533] The error was not possible on iOS devices because those devices did not allow for simultaneous selection of contacts.

[534] Ex. 38 (Nov. 15, 2019 resp. to CID) at 18.

[535] *Id.* at 20.

[536] Ex. 38 (Nov. 15, 2019 resp. to CID) at 18–20; Ex. 40 (Jan. 31, 2020 White Paper) at 5–6.

[537] *Id.*

push notifications, then they did not have any way to access the Affected Group Chat.

c. Even if an Affected User enabled push notifications, once the push notification for the Affected Group Chat was cleared, there was no way for the Affected User to recover the Affected Group Chat.

d. The Group Chat Technical Error did not provide an opportunity for exploitation by strangers because users were the only people who could initiate such a chat and they were limited to selecting their *approved* contacts. Thus, the only people who could be brought into such a chat were known and approved by the chat creator's parent(s). There was no possibility for a stranger to create and exploit such a chat.[538]

201. After the Messenger Kids Team internally detected the Group Chat Technical Error on June 12, 2019, the team remediated it in less than 24 hours by restoring the Approved Contact Check the morning of June 13, 2019.[539]

202. After additional analysis, the team fixed the race condition on June 14, 2019, by resolving an issue related to the mutex.[540]

203. By July 2, 2019, the team further enhanced the checks on group message chats so that the Approved Contact Check ran every time a user sent a message to the group (as opposed to only at the time when the group was created).[541]

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[538] *Id.*

[539] PFOF ¶ 1153; Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.) at 144:3–6 (describing that remediation was a high priority).

[540] Ex. 38 (Nov. 15, 2019 resp. to CID) at 21; Ex. 40 (Jan. 31, 2020 White Paper) at 8.

[541] *Id.*

204. The Messenger Kids Team determined that the Group Chat Technical Error resulted in 5,658 Messenger Kids users being included in chats with unapproved contacts in which someone other than the group creator sent at least one message.[542] This constituted less than one half of one percent of the 1.6 million monthly active Messenger Kids users at the time the error was discovered.[543]

205. Of the 5,658 Affected Users, fewer than 2,000 were in the group chats with a Messenger user with a self-reported age of 18 years old or older.[544]

206. Messenger Kids sent the following notification on July 15, 2019, to parents of Messenger Kids users who were in Affected Group Chats with an unconnected participant:

> Hi [PARENT], we found a technical error that allowed [KID]'s friend [KID A] to create a group chat with [KID] and one or more of [KID A]'s parent-approved friends, even though you had not approved those friends. We want you to know that we've turned off this group chat and are making sure that group chats like this won't be allowed in the future. If you have questions about Messenger Kids and online safety, please visit our Help Center and Messenger Kids Parental Controls. We'd also appreciate your feedback.[545]

207. Meta identified no parent or user complaints or bug bounty reports about either technical error.[546]

6. Meta Promptly Detects, Investigates, and Remediates the Video Call Technical Error

208. In July 2019, while investigating the Group Chat Technical Error, the Messenger Kids Team discovered that in limited cases a parent-approved Messenger contact could add a

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[542] PFOF ¶ 1154.

[543] Ex. 38 (Nov. 15, 2019 resp. to CID) at 22; Ex. 40 (Jan. 31, 2020 White Paper) at 5.

[544] Ex. 38 (Nov. 15, 2019 resp. to CID) at 23.

[545] *Id.*

[546] Ex. 40 (Jan. 31, 2020 White Paper) at 6, 8.

non-parent-approved individual to an ongoing one-to-one video call with a Messenger Kids user the "Video Call Technical Error").[547]

209. The Video Call Technical Error occurred only under specific circumstances: (1) an ongoing, (2) one-to-one, (3) video call between (4) a Messenger Kids user and (5) an approved Messenger user, (6) where the Messenger user chose to add a third party, (7) on specific devices during two brief periods of time: on iOS devices from November 12, 2018 to January 30, 2019, and on Android from May 27, 2019 to July 2, 2019 ("Affected Video Calls").[548]

210. The Messenger Kids Team determined that the Video Call Technical error arose out of the interaction between Messenger Kids and a functionality developed for Messenger. Specifically:

a. Over the course of 2018, Meta launched a feature on Messenger, designed to enable Messenger users to add a video call participant to an ongoing video call (the "escalation" feature). At that time Meta did not intend to launch this feature for Messenger Kids.[549]

b. In order to prevent the launch of this feature on Messenger Kids, the Messenger Kids Team put a "gatekeeper code" in place. A gatekeeper code is a mechanism Meta employs to incrementally roll out a product to segments of the user base, or to hold something back from users entirely.[550]

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[547] PFOF ¶ 1164; Ex. 38 (Nov. 15, 2019 resp. to CID) at 23–24.

[548] Ex. 38 (Nov. 15, 2019 resp. to CID) at 24; Ex. 40 (Jan. 31, 2020 White Paper) at 6, 8.

[549] PFOF ¶¶ 1157–58; Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.) at 154:17–155:12; Ex. 38 (Nov. 15, 2019 resp. to CID) at 23–24; Ex. 40 (Jan. 31, 2020 White Paper) at 6–7.

[550] PFOF ¶ 1159; Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.) at 152:20–154:16; Ex. 40 (Jan. 31, 2020 White Paper) at 6–7.

c. On November 12, 2018, a Messenger engineer inadvertently enabled the escalation feature on Messenger Kids while cleaning up code (herein referred to as the "2018 iOS Change").[551]

d. On January 9, 2019, a Messenger engineer detected the 2018 iOS Change. The engineer updated the code to prevent escalation from working in Messenger Kids.[552] The Messenger engineer also checked the code for the Android app, and verified that it was functioning as intended—no change was necessary. At that point, Messenger Kids was working as intended on both iOS and Android.[553] Because of Messenger Kids' overlapping controls that prevent connections with unapproved contacts, the Messenger Kids Team did not believe at the time that the inadvertent ability to escalate a call with a Messenger Kids user on it would impact who users could communicate with. As discussed above, the Video Call Technical Error only occurred where several specific events occurred at the same time.[554]

e. In May 2019, while updating the Messenger Kids code to address an Android operating system update, Meta inadvertently removed the gatekeeper code for Android devices.[555] Meta detected this issue on July 2, 2019, and fixed it the same day.[556]

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[551] PFOF ¶ 1160; Ex. 40 (Jan. 31, 2020 White Paper) at 6–7.

[552] PFOF ¶ 1162; Ex. 40 (Jan. 31, 2020 White Paper) at 6–7.

[553] Ex. 40 (Jan. 31, 2020 White Paper) at 6–7.

[554] *Id.*

[555] PFOF ¶ 1163; Ex. 40 (Jan. 31, 2020 White Paper) at 7.

[556] PFOF ¶ 1164; Ex. 40 (Jan. 31, 2020 White Paper) at 6–7.

211. From July 3, 2019, through July 5, 2019, the Messenger Kids Team programmed the Approved Contact Check to run any time someone tried to modify the number of participants on a video call.[557] That check prevented anyone from joining a video call who was not an approved contact for any Messenger Kids users already on the call.[558]

212. Not only did Meta promptly remediate this issue, other controls in place at the time meant that the ability of a Messenger Kids user to communicate with an unapproved contact was limited.

a. Once the video call ended, there was no way for the Messenger Kids user and the third party to contact each other directly, whether through chat or video.[559]

b. The Video Call Technical Error only allowed for communication with friends of approved contacts. It did not allow Messenger Kids users themselves to initiate a video call with an unapproved contact (or the other way around). Nor could the Messenger Kids user and unapproved contact engage in any direct communication after ending the video call.[560]

213. Fewer than 4,000 Messenger Kids users[561] participated in video calls with an unapproved contact (not including calls on which the user's parent was on the call and thus was the one adding the third party).[562] This constituted less than one half of one percent of the 1.6

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[557] Ex. 38 (Nov. 15, 2019 resp. to CID) at 17; Ex. 40 (Jan. 31, 2020 White Paper) at 8.

[558] *Id.*

[559] Ex. 38 (Nov. 15, 2019 resp. to CID) at 25; Ex. 40 (Jan. 31, 2020 White Paper) at 7.

[560] *Id.*

[561] Participants in Affected Group Chats could also initiate a video call with the participants in that group message chat, which theoretically provided a way for a user to be placed in a group video call with an unapproved contact. The "fewer than 4,000" figure includes all identified video calls in which a Messenger Kids user was in a video call with an unapproved contact, whether as a result of the Group Chat Technical Error or Video Call Technical Error. *See* Ex. 38 (Nov. 15, 2019 resp. to CID) at 24.

[562] PFOF ¶ 1156; Ex. 38 (Nov. 15, 2019 resp. to CID) at 24; Ex. 40 (Jan. 31, 2020 White Paper) at 7.

million monthly active Messenger Kids users at the time the error was discovered.[563] Messenger Kids cannot determine precisely how many of those users were under the age of 13.[564]

214. On October 8, 2019, Messenger Kids notified the parents of Messenger Kids users affected by the Video Call Technical Error. In an effort to provide parents with the most accurate information, Messenger Kids prepared a customized two-step notification to reflect the details of the Messenger Kids user's participation in Affected Video Calls.[565] The message to parents included information about the identity of users who participated in Affected Video Calls with the parent's child.[566]

215. Meta identified no parent or user complaints or bug bounty reports about either technical error.[567]

216. Since the Video Call Technical Error was remediated on July 2, 2019, Meta has identified no further instances of Messenger Kids users communicating with unapproved contacts.

7. Meta Undertakes Supplemental Mitigation and Enhancement Measures

217. In addition to remediating the errors, Meta took several supplemental mitigation measures to strengthen Messenger Kids' controls.[568]

218. Meta retained outside counsel to conduct a comprehensive review with the assistance of a third-party cybersecurity risk management firm NCC Group). The review

[563] Ex. 40 (Jan. 31, 2020 White Paper) at 5.

[564] Ex. 38 (Nov. 15, 2019 resp. to CID) at 27.

[565] *Id.*

[566] *Id.*

[567] *Id.* at 21, 25.

[568] Ex. 40 (Jan. 31, 2020 White Paper) at 9.

covered not only the technical errors but also testing of Messenger Kids' functionality designed to confirm that the product adhered to Meta's descriptions of the services.[569] The purpose of the review was to ensure that "everything in the code [was] working exactly as [] expected" and to "put more checks and balances in the code . . . to make [the] code even better."[570]

219. The product review resulted in a number of additional product upgrades, which continue to operate today,[571] including:

a. *Watchdog Monitoring System*: Meta developed and implemented a "watchdog" monitoring system designed to detect if this type of event were to occur in the future. The watchdog system (1) analyzes at key and recurring intervals whether any of the participants in a message chat or on a video call are not approved contacts, (2) if it detected this event, it would automatically remove the unconnected Messenger Kids user from the chat or video call, and (3) send an internal alert for the Messenger Kids Team to investigate the cause.[572]

b. *Kill Switches*. The Messenger Kids Team introduced a set of "kill switches," which allow personnel to turn off in-app features within a matter of minutes. Meta can leverage the kill switches to limit various functionalities of the app thereby quickly containing the scope of a detected problem. For example, the kill switches can be used to immediately disable the ability to send GIFs, terminate video calling functionality, or remotely log all users out of the app.[573]

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[569] Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.) at 161:22–163:14; Ex. 40 (Jan. 31, 2020 White Paper) at 9.

[570] Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.) at 161:22–163:14.

[571] *Id.* at 163:15–171:9.

[572] *Id.* at 163:19–167:7; Ex. 38 (Nov. 15, 2019 resp. to CID) at 17–18; Ex. 40 (Jan. 31, 2020 White Paper) at 9.

[573] Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.) at 167:8–169:2; Ex. 40 (Jan. 31, 2020 White Paper) at 9.

c. *Alerts*. The Messenger Kids Team added alerts to detect changes in any expected behaviors in the app. If such changes exceed a defined baseline range, an alert is sent to the Messenger Kids on-call team for investigation. For example, there is a certain range of the number of notifications expected to be sent to parents each day, and if the number observed deviates suspiciously from this expected range, an alert will be triggered.[574]

220. Beyond the product review, Meta undertook the following work to continue to improve and refine Messenger Kids:

a. *Rewriting Messenger Kids Code*: In the initial phases of developing Messenger Kids, the Messenger Kids Team imported a significant amount of the Messenger code into Messenger Kids, disabling unnecessary Messenger code in the process. Over the last few years, the Messenger Kids Team has rewritten large sections of the Messenger Kids code, removing irrelevant Messenger code in the process. Removing old Messenger code helps ensure that issues do not arise unexpectedly from that code (including from changes that Messenger makes to that code).[575]

b. *QA Procedures that Involve Messenger Updates*: The Messenger Kids Team's QA process now includes testing of Messenger code on Messenger Kids to ensure changes to Messenger do not affect Messenger Kids' core commitments.[576]

c. *Updating the Incident Response Process*: Meta has continued to refine its processes for responding to and remediating technical incidents that may have an adverse effect on the operation of Messenger Kids (referred to internally as Site

[574] Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.) at 169:3–170:7; Ex. 40 (Jan. 31, 2020 White Paper) at 9–10.

[575] *See* Ex. J (Letter from M. Rubin to L. Kopp, Facebook, Inc. Matter No. 1923168 (Apr. 6, 2021)) at 5.

[576] *Id.*

Events ("SEVs")). These improvements include more robust and targeted processes for ensuring that any incidents that potentially impact privacy are addressed across all platforms and applications. For example, once a SEV is identified, teams of cross-functional stakeholders separately analyze the sufficiency of the SEV remediation.[577]

8. Meta Voluntarily Disclosed the Technical Errors and Cooperates with the Commission's Inquiry

221. On July 15, 2019, Meta proactively notified the Commission that the Messenger Kids Team had internally discovered the two technical errors in Messenger Kids.[578]

222. Meta then fully cooperated with the Commission's questions regarding this matter.

223. On October 8, 2019, the Commission sent Meta a Civil Investigative Demand ("CID") relating to the technical errors, to which Meta responded on November 15, 2019, with narrative responses to interrogatories and a production of approximately 100 documents.[579]

224. On January 10, 2020, Commission Staff requested that Meta submit a white paper addressing the foreseeability of the technical errors and the interplay between Messenger Kids and Facebook infrastructure. Meta submitted this white paper on January 31, 2020.[580]

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[577] *See* Ex. 4 (2021 Assessment Report) at 104–05.

[578] PFOF ¶ 1164.

[579] *See* Ex. E (Civil Investigative Demand, Facebook, Inc. Matter No. 1923168 (Oct. 8, 2019)); Ex. 38 (Nov. 15, 2019 resp. to CID).

[580] *See* Ex. 40 (Jan. 31, 2020 White Paper).

225. The Commission subsequently issued a second CID on March 10, 2020 ("Second CID"), requesting documents related to the technical errors.[581] Meta responded between June 10, 2020, and August 31, 2020, producing approximately 24,000 pages of materials.[582]

226. Commission Staff followed up with Meta in March 2021 and requested additional information.[583] Meta fully responded to this request on April 6, 2021.[584]

227. On May 28, 2021, the Commission sent Meta a letter requesting the names of individuals who were responsible for (1) developing the controls that kept children from communicating with unapproved contacts and (2) remediating the technical errors.[585] Meta fully responded to this letter on June 11, 2021.[586]

228. On August 11, 2021, the Commission requested a deposition of Messenger Kids' former Engineering Director Hady Abou El-Kheir, who sat for the deposition on October 14, 2021.[587]

229. In addition to these formal requests and submissions, Meta has continued to provide the Commission with regular briefings on product changes.

230. The Commission has not requested any substantive information regarding the technical errors since 2021.

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[581] *See* Ex. F (Civil Investigative Demand, Facebook, Inc. Matter No. 1923168 (Mar. 10, 2020)).

[582] *See* Ex. I (Letter from M. Rubin to L. Kopp, Facebook, Inc. Matter No. 1923168 (Aug. 31, 2020 .

[583] *See* Ex. J (Letter from M. Rubin to L. Kopp, Facebook, Inc. Matter No. 1923168 (Apr. 6, 2021)) at 1.

[584] *Id.*

[585] *See* Ex. K (Letter from L. Kopp to M. Rubin, In the Matter of Facebook, Inc., Docket No. C-4365 (May 28, 2021))

[586] *See* Ex. L (Letter from M. Rubin to L. Kopp, In the Matter of Facebook, Inc., Docket No. C-4365 (Jun. 11, 2021)).

[587] *See* Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.).

IV. THE COMMISSION'S PRELIMINARY FINDINGS OF FACT ARE INACCURATE AND DO NOT SUPPORT A FINDING THAT META DID NOT MEET PART VII'S REQUIREMENTS

Preliminary Findings of Fact (PFOF)	Response to PFOF
A. Overview of Privacy Program & Assessment (¶¶ 1–29)	
Paragraph 1 1. On October 29, 2021, Respondent notified the Commission that Facebook, Inc. ("Facebook" or the "Company") had changed its name to Meta Platforms, Inc., and reported that Meta Platforms, Inc. would replace Facebook, Inc. as Respondent in the Commission's orders.[1] *** [1] Ex. 48 (Oct. 29, 2021, notice).	As set forth in **Paragraph 1**, on October 29, 2021, Meta notified the Commission that Facebook, Inc. ("Facebook" or the "Company") had changed its name to Meta Platforms, Inc., and reported that Meta Platforms, Inc. would replace Facebook, Inc. as Respondent in the [Commission's] orders.
Paragraphs 2–5 2. The 2020 Order requires Facebook to establish, implement, and maintain a comprehensive privacy program that "protects the privacy, confidentiality, and integrity[2] of the Covered Information[3] collected, used, or shared" by Facebook. 3. The Order specifies minimum requirements for the program and requires Facebook to obtain initial and biennial assessments of its privacy program from an independent third-party professional.[4] 4. On June 10, 2020, Respondent requested the approval of Protiviti Inc. ("Protiviti" or	**Paragraphs 2–5** purport to describe certain of Meta's obligations and actions taken pursuant to requirements set forth in the "2020 Order." Meta clarifies that Paragraphs 2–5 describe in particular requirements set forth in Part VII and Part VIII of Attachment A to the Stipulated Order for Civil Penalty, Monetary Judgment, and Injunctive Relief entered by the U.S. District Court for the District of Columbia on April 23, 2020.[588]

[588] *See, e.g.*, Ex. 95 (June 30, 2022 FTC demand letter) ("As you know, the Stipulated Order for Civil Penalty, Monetary Judgment, and Injunctive Relief entered by the United States District Court for the District of Columbia on April 23, 2020 (Dkt. No. 35) (the 'Order'), authorizes the Federal Trade Commission and the Department of Justice to use discovery devices to request certain documents and information. . . . In particular, the Order entitles the Commission and the Department to request documents and information concerning Meta's compliance with the Order, including the Order's prohibition against misrepresentations concerning the extent to which Meta maintains the privacy or security of Covered Information, as that term is defined in the Order, and the Order's provisions concerning a mandated privacy program.").

Preliminary Findings of Fact (PFOF)	Response to PFOF
the "Assessor") as the assessor for assessments required by Part VIII of the Commission's 2020 Order in In re Facebook, Inc., FTC No. C-4365.[5] 5. On June 18, 2020, Protiviti was approved to conduct the initial assessment pursuant to Part VIII of the Commission's April 27, 2020, Order ("Order") and to carry out all other responsibilities assigned to the assessor under the Order.[6] *** [2] The Order defines "Integrity" to mean "the protection of information from unauthorized destruction, corruption, or falsification." Ex. 3 (2020 Order), Definition J. [3] The Order defines "Covered Information" to mean "information from or about an individual consumer including, but not limited to: (a) a first or last name; (b) geolocation information sufficient to identify a street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging User identifier or a screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ('IP') address, User ID, or other persistent identifier that can be used to recognize a User over time and across different devices, websites or online services; (g) a Social Security number; (h) a driver's license or other government issued identification number; (i) financial account number; (j) credit or debit information; (k) date of birth; (l) biometric information; (m) any information combined with any of (a) through (l) above; or (n) Nonpublic User Information." Ex. 3, Definition D. [4] Ex. 3, Parts VII & VIII. [5] Ex. 67 (June 10, 2020, letter . [6] Ex. 68 (June 18, 2020, letter).	These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because:[589] ● They fail to explain that the Order specifies that Meta can "satisfy" the "requirement" that Meta "establish, implement, and maintain" a "comprehensive privacy program" by meeting the "minimum requirements" set forth in Part VII, which Meta has done.[590]
Paragraphs 6–9 6. Protiviti's assessment team included specialists in technology and social media,	**Paragraphs 6–9** purport to describe Protiviti's approach to conducting the initial six-month assessment of Meta's Privacy Program.

[589] Throughout this Response there may be additional inaccuracies and/or reasons why the Commission's allegations do not support a finding that Meta did not meet Part VII's requirements beyond those expressly set forth herein.

[590] *See supra* Section I.A.6 ¶¶ 26–94.

Preliminary Findings of Fact (PFOF)	Response to PFOF
data analytics, privacy regulation, and compliance program governance.[7] 7. Protiviti's assessment plan incorporated relevant elements from the National Institute of Standards and Technology (NIST) and Generally Accepted Privacy Principles (GAPP) frameworks and criteria, as well as the assessment team's collective experience with privacy program standards, and was tailored to Facebook's unique size and complexity.[8] 8. For the initial six-month assessment, more than [redacted] professionals at Protiviti worked over [redacted] hours. As part of this work, they submitted more than [redacted] requests to independently obtain and review evidence including more than [redacted] policies, procedures, reports, training materials, and other documents). In addition, Protiviti conducted more than [redacted] interviews and process walkthroughs to evaluate safeguard design effectiveness and to observe Facebook's controls in practice. They also conducted independent testing plans tailored to each safeguard, used audit-industry standard sampling methodologies, and performed approximately [redacted] sample tests to assess the operating effectiveness of Facebook's safeguards.[9] 9. Protiviti did not rely primarily on Facebook management assertions or attestations in conducting the Assessment.[10] *** [7] Ex. 4 (Protiviti's June 21, 2021, Independent Privacy Program Assessment Report) at 1. [8] Ex. 4 at 1. [9] Ex. 4 at 1.	These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● They omit additional details regarding Protiviti's approach described in the 2021 Assessment Report, including that during the Assessment period (1) Protiviti met with members of Meta's Independent Privacy Committee (IPC) of the Board of Directors [redacted]; and (2) Protiviti also periodically [redacted] met with the FTC four times, and regularly met with members of Meta's management team and outside legal advisors, to inform them of the progress of the initial six-month Assessment.[591] ● They ignore that Protiviti's work could not have been possible without "the extensive access to, and cooperation provided by Facebook leadership throughout our Assessment."[592]

[591] *See* Ex. 4 (2021 Assessment Report) at 1.

[592] *Id.* at 2.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[10] Ex. 4 at 1.	
Paragraphs 10–14 10. Among other measures, Protiviti performed a design effectiveness assessment of Facebook's privacy program to evaluate if the program, as designed, would achieve the program's objectives and FTC Order requirements, mitigate privacy risk, and allow for implementation of a comprehensive privacy program.[11] 11. Specifically, Protiviti [redacted][12] 12. Protiviti also conducted operating effectiveness assessments on [redacted] safeguards to determine if they achieved their [redacted][13] 13. Specifically, Protiviti developed procedures to determine whether high- and medium- impact safeguards were fully implemented, executed, and operating as	**Paragraphs 10–14** purport to describe Protiviti's methodology with respect to assessing the design effectiveness and operating effectiveness of Meta's safeguards. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● They omit other details regarding Protiviti's approach to assessing design effectiveness and operating effectiveness set forth in the 2021 Assessment Report, including [redacted][593] ● They fail to recognize that Protiviti's approach was not limited to testing safeguards specifically required by the subparts of Part VII of the Order. Rather, Protiviti tested safeguards [redacted] regardless of whether those safeguards and/or their related processes were specifically called for by Part VII of the Order.[594] Indeed, Protiviti recognized that it was not simply evaluating Meta's Privacy Program based on the requirements of Part VII, but rather on a broader assessment "framework" incorporated privacy compliance best practices from third-party standard-setting organizations "as well as our collective professional experience on privacy program standards, and

[593] *Id.* at 12.

[594] *Id*. at 7.

Preliminary Findings of Fact (PFOF)	Response to PFOF
intended. Protiviti designed its testing procedures to evaluate whether the safeguards supported an effective mitigation of the respective risk. [redacted][14] 14. [redacted]	tailored . . . to [Meta's] unique size and complexity."[595] ● Paragraph 14 fails to note that there is nothing surprising or unexpected about the presence of gaps and weaknesses in the Privacy Program. The parties anticipated that Meta's Privacy Program would have "gaps and weaknesses" that would be addressed on an ongoing basis over the life of the 20-year order—Part VIII.D of the Order specifically tasks the Assessor with identifying "gaps or weaknesses" in the Privacy Program and Part X.A.5.c of the Order created a mechanism for Meta to address such gaps in subsequent periods, providing that Meta would address "any material issues raised by the most recent Assessment or material unresolved issues from prior Assessments" identified by the Assessor through "proposed remediation plans."[596]

[595] *Id.* at 10.

[596] Ex. 2 (Stipulated Order 2019) at 15.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][15] *** [11] Ex. 4 at 11. [12] Ex. 4 at 11. [13] Ex. 4 at 11. [14] Ex. 4 at 11. [15] Ex. 4 at 13.	
Paragraphs 15–18 and **23–25** 15. Facebook executives acknowledged the value of the Assessor's work.[16] 16. At his deposition, Facebook Chief Executive Officer Mark Zuckerberg testified, [redacted][17] 17. Sheryl Sandberg was Facebook's Chief Operating Officer.[18] 18. At her deposition, Sandberg explained, [redacted]	**Paragraphs 15–18** and **23–25** purport to set forth the testimony of Meta management regarding the role of the Assessor in conducting the initial Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● They wrongly imply that because the Assessor found "deficiencies" in Meta's Privacy Program, the Program was somehow defective under Part VII, when, in actuality, the existence of deficiencies was expected[597] and Meta's Privacy Program far exceeded Part VII's requirements.[598] ● They misleadingly attempt to use Mr. Zuckerberg's testimony that [redacted] and Ms. Sandberg's testimony that [redacted]

[597] *See infra* Section IV.A, Resp. to PFOF ¶ 22.

[598] *See supra* Section I.A.6 ¶¶ 26–94.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][19] 23. When asked at her deposition [redacted] Facebook Chief Operating Officer Sheryl Sandberg responded, [redacted][24] 24. At her deposition, Facebook Chief Operating Officer Sheryl Sandberg stated, [redacted][25] 25. At her deposition, Facebook Chief Operating Officer Sheryl Sandberg stated, [redacted][26]	[redacted] As Meta previously informed the Commission on many occasions, all of the Assessor's observations referenced by the Commission followed extensive and active discussion between Meta and the Assessor, and Meta committed to addressing all of the Assessor's obligations, even in instances where it disagreed with the Assessor's conclusions.[599] For the same reason, the Commission's preliminary factual findings are similarly misleading insofar as they imply or purport that Meta's remediation efforts should be used to suggest that Meta necessarily agreed with the Assessor's findings regarding the Privacy Program. ● They omit relevant context from Mr. Zuckerberg's and Ms. Sandberg's testimony that [redacted][600] ● They fail to recognize that Ms. Sandberg's testimony indicates [redacted][601]

[599] *See, e.g.*, Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 9.i) at 8–9.

[600] *See, e.g.*, Ex. 43 (M. Zuckerberg Dep.) at 53:12–15 [redacted]; Ex. 47 (S. Sandberg Dep.) at 134:2–134:14 [redacted].

[601] Ex. 47 (S. Sandberg Dep.) at 134:2–134:14.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[16] Ex. 43 (Mark Zuckerberg Dep. Tr.) at 53:6–11; Ex. 47 (Sheryl Sandberg Dep. Tr.) at 136:14–18. [17] Ex. 43 at 53:6–11. [18] Ex. 47 at 9:15–23. [19] Ex. 47 at 136:14–18. [24] Ex. 47 at 135:18–136:3. [25] Ex. 47 at 146:7–12. [26] Ex. 47 at 152:3–5.	
Paragraphs 19–21 19. Protiviti (the "Assessor") submitted a report of its initial assessment of Facebook's privacy program for the period from October 25, 2020, through April 22, 2021.[20] 20. The Assessor observed that "the overall scope of the program and structure [redacted] into which the program is organized is logical and appropriately comprehensive. As a result, the key foundational elements necessary for an effective program are now in place, although their maturity and completeness vary [redacted][21] 21. The Assessor found, however, "the gaps and weaknesses noted within our review demonstrate that substantial additional work is required, and additional investments must be made, in order for the program to mature [redacted][22] *** [20] Ex. 4 at 1. [21] Ex. 4 at 3. [22] Ex. 4 at 3.	**Paragraphs 19–21** purport to set forth the Assessor's observations about the state of Meta's Privacy Program based on findings from the first six months of the Program's operation, as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● They are misleading to the extent they wrongly imply that the Assessor's observation that "the gaps and weaknesses noted within our review demonstrate that substantial additional work is required, and additional investments must be made, in order for the program to mature [redacted]" somehow suggests that Meta failed to meet the requirements of Part VII of the Order. The Assessor's observation necessarily speaks to the early stage at which the Assessor evaluated Meta's new program and the maturation of the program over time. As the Assessor more recently concluded, "[t]he effectiveness and maturity of the control environment [of the Privacy Program] has notably improved based on our [2023] Assessment results,"[602]

[602] Ex. D (2023 Assessment Report) at 7.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	and "Meta made significant strides in improving the MPP over the two-year period,"[603] "across [redacted]"[604] The Assessor attributed the improvement to Meta's additional work, including "new voluntary or discretionary activities driven by Management's decision to improve the program" and action taken by Meta to remediate the gaps and weaknesses identified during the initial six-month Assessment, as well as during the first biennial Assessment.[605]
Paragraph 22 22. In total, the Assessor identified [redacted] individual gaps and weaknesses [redacted][23] *** [23] Ex. 4 at 3.	**Paragraph 22** purports to set forth the Assessor's observations about the gaps and weaknesses of Meta's Privacy Program based on findings from the first six months of the Program's operation, as reflected in the initial Assessment Report. This paragraph does not support a finding that Meta did not meet Part VII's requirements because: ● The number of total gaps is irrelevant to the question of whether Meta has met the requirements under Part VII of the Order. ○ There is nothing surprising or unexpected about the presence of gaps and weaknesses in the Privacy Program. The parties anticipated that Meta's Privacy Program would have "gaps and weaknesses" that would be addressed on an ongoing basis over the life of the 20-year order—Part VIII.D of the Order

[603] *Id*. at 348; Ex. B (May 3, 2023 Assessor Presentation to FTC) at 3.

[604] Ex. D (2023 Assessment Report) at 8.

[605] *Id.* at 6–7.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	specifically tasks the Assessor with identifying "gaps or weaknesses" in the Privacy Program and Part X.A.5.c of the Order created a mechanism for Meta to address such gaps in subsequent periods, providing that Meta would address "any material issues raised by the most recent Assessment or material unresolved issues from prior Assessments" identified by the Assessor through "proposed remediation plans."[606] ○ The paragraph implies that the gaps and weaknesses are related to obligations under Part VII of the Order when a large number of the gaps or weaknesses identified relate to safeguards and/or processes that Meta affirmatively chose to implement beyond those specifically required by the Order.[607] ○ The Commission fails to acknowledge that the Assessor employed a very expansive approach to identifying gaps or weaknesses that was untethered from the requirements in Part VII and instead cataloged a gap or weakness any time it identified an exception from Meta's policies and procedures, an opportunity to improve Meta's Privacy Program processes, or even where the

[606] Ex. 2 (Stipulated Order 2019) at 15.

[607] *See supra* Section I.A.6 ¶¶ 28–94.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	Assessor forecast a need for improvements to processes not yet required under the Order e.g., certain annual processes).[608] ○ The total number of gaps is presented without important context. The Assessor found no gaps or weaknesses in the vast majority— approximately [redacted] —of the roughly [redacted] safeguards comprising the Privacy Program during the initial six-month Assessment,[609] even under the expansive approach the Assessor employed to identify gaps or weaknesses. ○ The Commission ignores that Meta remediated a portion of these gaps or weaknesses during the initial six-month Assessment period and created [redacted] MAPs to address and remediate the remainder.[610] Further, the Assessor had closed more than [redacted] of those MAPs as of the conclusion of the first biennial Assessment period[611] and has since confirmed that the remainder of the related gaps or weaknesses have been addressed and remediated.[612]

[608] *See supra* Section I.A.3 ¶ 20.

[609] Ex. B (May 3, 2023 Assessor Presentation to FTC) at 3.

[610] M. Protti Decl. ¶ 12.

[611] Ex. C (Letter from M. Protti to Federal Trade Commission (June 30, 2023)) at 2.

[612] M. Protti Decl. ¶ 12.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	○ This paragraph fails to give any weight to the Assessor's recognition that the gaps or weaknesses are [redacted] including by failing to acknowledge that [redacted] of these gaps or weaknesses related to documentation-related issues, rather than any underlying issues with Meta's processes.[613] ○ The Commission fails to recognize that gaps and weaknesses were expected and anticipated by both Meta and the FTC, with the Assessor recognizing Meta's "management itself anticipated" the presence of gaps and weaknesses in the Privacy Program that would require substantial additional work and disclosed as much to the FTC "in the Company's Day 180 Compliance Report," submitted to the FTC in October 2020, two-and-a-half years before the FTC commenced this action.[614] ○ The Commission has not alleged any harm to users relating to these gaps and weaknesses. ● It wrongly implies that the cumulative number of gaps and weaknesses in the Program somehow rendered Meta out of compliance with the Order, while failing to acknowledge the Assessor's central findings regarding Meta's

[613] Ex. 4 (2021 Assessment Report) at 3.

[614] *Id.*; *See also supra* Section I.A ¶ 14.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	Privacy Program, which make clear that it is appropriately comprehensive under the Order, including that: ○ [redacted][615] ○ "[T]he overall scope of the program and structure [redacted] into which the program is organized is logical and appropriately comprehensive" and that "the key foundational elements necessary for an effective program are now in place."[616] ○ The key foundational elements Meta put into place included [redacted][617] ○ "[Meta] has made extensive investments in its privacy program since the effective date of the Order, and meaningful

[615] Ex. 4 (2021 Assessment Report) at 5.

[616] *Id.* at 3.

[617] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	progress has been made."[618] These investments included "[growing] privacy-dedicated headcount from approximately [redacted] employees as of mid-2019 to more than [redacted] employees as of the date of [the First] Assessment, with budget-approved plans to add an additional [redacted] resources by 2021 year-end," "[c]reat[ing] a dedicated Privacy Review function staffed by more than [redacted] privacy subject matter specialists and supporting technology infrastructure to conduct independent assessments of the privacy risks posed by new or modified products, services, or practices," "[e]xpand[ing] the universe of privacy safeguards from [redacted] as of February 2019 to over [redacted] by February 2021," "[s]ignificantly expand[ing] the privacy training program content," and "[p]ublish[ing] more than [redacted] privacy governing documents and approximately [redacted] additional privacy-focused procedures."[619] ○ Meta made a choice to create "an entirely new [privacy] program" "in recognition of the significant degree of change expected by the Order."[620]

[618] *Id.* at 3.

[619] *Id.* at 2.

[620] *Id*.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	○ Many of the identified gaps and weaknesses reflect the short-term impact of Meta's decision to completely redesign the Program as part of a long-term strategy to embed privacy into the Company's operations and culture. As the Assessment notes, "although Meta "had the option of renovating its existing [privacy] program and safeguards to conform to the new requirements imposed by the 2020 Order," Meta instead "made the decision to comprehensively redesign the privacy organizational structure, program materials, and safeguards [redacted][621] ● It fails to recognize that Meta subsequently made additional improvements to enable the Privacy Program to mature. The Assessor recognized in the 2023 Assessment Report that: ○ "[T]he effectiveness and maturity of the control environment [of the Privacy Program] has notably improved based on our [2023] Assessment results."[622]

[621] *Id.*

[622] Ex. D (2023 Assessment Report) at 7.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	○ "Meta made significant strides in improving the MPP over the two-year period."[623] ○ The program-wide improvement was attributable to "new voluntary or discretionary activities driven by Management's decision to improve the program" and action taken by Meta to remediate the gaps and weaknesses identified during the initial six-month Assessment, as well as during the first biennial Assessment.[624] ○ Those efforts by Meta included implementing, "[t]hroughout [the first biennial] Assessment Period, . . . [redacted] Management Action Plans (MAPs) to remediate Gaps and Weaknesses (hereafter Gaps), including [redacted] Gaps identified during the first biennial Assessment Period, and to make improvements that were self-identified by Meta."[625] ○ "Based on the actions noted above, as well as MAPs executed throughout the period, [the Assessor] noted improvement in the maturity of the program across [redacted]."[626] and further recognized that Meta went

[623] *Id*. at 348; Ex. B (May 3, 2023 Assessor Presentation to FTC) at 3.

[624] Ex. D (2023 Assessment Report) at 6–7.

[625] *Id.* at 6.

[626] *Id.* at 8.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][627] ● Its emphasis on the cumulative number of gaps [redacted] is misguided because it ignores the Assessor's finding that [redacted][628] ● It omits key information regarding the resources Meta dedicated to continuing to mature its Privacy Program since the initial Assessment period. The Assessor recognized in the 2023 Assessment Report that "[o]ver the past two years, Meta has continued to make significant investments in the [Privacy Program]."[629] Specifically, the Assessor found that: ○ "Meta has continued to push a privacy-first message from the

[627] *Id.* at 13; *see also supra* Section I.A ¶¶ 23, 39, 44, 47, 56, 65, 77.

[628] Ex. D (2023 Assessment Report) at 13.

[629] *Id.* at 7.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	top of company leadership," and "continued to increase the total number of resources dedicated to the MPP even as the Company reduced total staffing levels beginning in late 2022."[630] ○ The "overall Privacy and Data Practices Organization, which is . . . directly responsible for implementing and maintaining the MPP, [redacted][631] ○ Further, [redacted][632]

[630] *Id.*

[631] *Id.*

[632] *Id.*; *See also supra* Section I.A ¶ 12.

Preliminary Findings of Fact (PFOF)	Response to PFOF
Paragraph 26 26. The Assessor's key thematic observations included the need for Facebook to fully establish and mature an independent standard-setting and oversight function. [redacted][27] *** [27] Ex. 4 at 3–4.	**Paragraph 26** purports to set forth the Assessor's observations about Meta's independent standard-setting and oversight function based on findings from the first six months of the Program's operation, as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements because: ● The need for Meta to "fully establish and mature and independent standard-setting and oversight function" is not a requirement of Part VII and reflects an understanding Meta will continue to develop and mature this function as the Privacy Program matures. ● It incorrectly implies that the Assessor stated the Company lacked a second line of defense. Rather, the Assessor stated that Meta [redacted][633] ● It omits that the Assessor found in the

[633] Ex. 4 (2021 Assessment Report) at 3.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	2023 Assessment Report that, as it had projected in the 2021 Report, "Meta addressed these thematic observations through a wide range of actions described in the body of this report,"[634] and that Meta has "continued to make significant investments in the MPP."[635] The Assessor noted that the effectiveness and maturity of the control environment has notably improved based on [] Assessment results reported herein" in part because of the actions Meta took to address the observation identified in Paragraph 26, which included the implementation of "[n]ew governance functions [that] have been added [redacted] to further define and clarify accountabilities," including establishing [redacted][636] The Assessor further noted that [redacted] and that [redacted]

[634] Ex. D (2023 Assessment Report) at 6.

[635] *Id*. at 7.

[636] *Id*. at 7.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][637] ● It also omits that Meta also addressed this finding by continuing "to increase the total number of resources dedicated to the MPP even as the Company reduced total staffing levels beginning in late 2022."[638] In particular, the Assessor recognized in the 2023 Assessment Report that "[t]he overall Privacy and Data Practices Organization, which is led by the Chief Privacy Officer-Product and is directly responsible for implementing and maintaining the MPP, [redacted] and that [redacted][639] The 2023 Assessment Report also noted that [redacted]

[637] *Id*. at 7–8.

[638] *Id.* at 7.

[639] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][640] ● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[641]
Paragraph 27 27. The Assessor further observed the need for the Company to establish a "risk and controls mindset" of "showing your work." [redacted][28] *** [28] Ex. 4 at 4.	**Paragraph 27** purports to set forth the Assessor's observations about Meta's implementation of a "risk and controls mindset" of "showing your work" based on findings from the first six months of the Program's operation, as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements because: ● There is no requirement in Part VII for Meta to establish a "risk and controls mindset" of "showing your work"; nonetheless, as described below, the Assessor has recognized that Meta has done so. ● It wrongly implies that the Assessor [redacted][642] ● It misleadingly omits that the Assessor [redacted]

[640] *Id.*

[641] Ex. 4 (2021 Assessment Report) at 3–4.

[642] *Id.* at 4 (emphasis added).

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][643] ● It omits that, in its 2023 Assessment Report, the Assessor recognized that "Meta addressed these thematic observations through a wide range of actions described in the body of this report,"[644] and that Meta has "continued to make significant investments in the MPP, and the effectiveness and maturity of the control environment has notably improved based on our Assessment results reported herein" in part because of the actions Meta's took to address this observation identified in Paragraph 27, including [redacted][645] The Assessor explained that [redacted][646] In addition, the 2023 Assessment Report emphasized that

[643] *Id.*

[644] Ex. D (2023 Assessment Report) at 6.

[645] *Id*. at 7.

[646] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][647] The Assessment Report also notes that Meta has created other initiatives to support [redacted], including by developing [redacted][648] ● It omits that the Assessor also found in the 2023 Assessment Report that Meta's approach to developing its Privacy Program has been an [redacted][649]

[647] *Id.* at 9, 39.

[648] *Id.* at 8.

[649] *Id.* at 13.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[650]
Paragraph 28 28. In addition, the Assessor observed that, [redacted], the Company should do more [redacted]. Specifically, although Facebook "employs large numbers of highly specialized resources who use process automation techniques, artificial intelligence and machine learning, and other forms of data analytics [redacted] there are "significant further opportunities . . . that should be prioritized and accelerated" for Facebook [redacted][29] *** [28] Ex. 4 at 4.	**Paragraph 28** purports to set forth the Assessor's observations about [redacted] based on findings from the first six months of the Program's operation, as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to implement any particular degree of automation across the Program. Further, Meta has implemented automated controls in the instance required in the Order[651] and—as described in the following paragraphs—in many other areas as well. ● It omits that the Assessor acknowledged that Meta [redacted]

[650] Ex. 4 (2021 Assessment Report) at 56–58.

[651] *See supra* Section I.A.6.d ¶¶ 34, 37.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][652] ● It omits that the 2023 Assessment Report recognizes that "Meta addressed these thematic observations through a wide range of actions described in the body of this report,"[653] and that Meta has "continued to make significant investments in the MPP, and the effectiveness and maturity of the control environment has notably improved based on our Assessment results reported herein" in part because of the actions Meta's took to address this observation identified in Paragraph 28, explaining that "Meta has created or enhanced a number of new tools and automation infrastructure to support the MPP," including by [redacted][654] The Assessor also identified a number of other initiatives implemented by Meta to address this finding, including the: ○ [redacted]

[652] Ex. 4 (2021 Assessment Report) at 5.

[653] Ex. D (2023 Assessment Report) at 6.

[654] *Id*. at 8.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][655] ○ [redacted][656] and ○ [redacted]

[655] *Id*. at 8.

[656] *Id*. at 8.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][657] ● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.
Paragraph 29 29. The Assessor concluded that, [redacted] a. [redacted] b. [redacted] c. [redacted][30] ***	**Paragraph 29** purports to set forth the Assessor's observations about Meta's underlying safeguard processes based on findings from the first six months of the Program's operation, as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements because: ● It wrongly suggests that Part VII imposed standards and requirements that appear nowhere in the Order. Nothing in the Commission's preliminary factual findings suggest that Meta failed to take any steps required by Part VII, and they ignore the Assessor's central conclusion that [redacted][658] ● It omits that in the 2021 Assessment Report, the Assessor also stated, "[w]e believe the overall scope of the program and structure of the [redacted] into which the program is organized is logical and appropriately comprehensive" and that "the key foundational elements necessary for an effective program are now in place,

[30] Ex. 4 at 5.

[657] *Id*. at 8.

[658] Ex. 4 (2021 Assessment Report) at 5.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	although their maturity and completeness vary [redacted][659] ● It fails to recognize that the 2023 Assessment Report found that Meta subsequently addressed [redacted] identified in paragraph, including through measures discussed above, such as: ○ [redacted][660] ○ "[n]ew governance functions have been added [redacted] to further define and clarify accountabilities," including establishing [redacted]

[659] *Id.* at 3.

[660] *Id.* at 8.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][661] thereby seeking to directly address any [redacted] ○ introducing a number of practices to [redacted][662] ● It omits that the Assessor also found in the 2023 Assessment Report that Meta's approach to developing its

[661] *Id.* at 7.

[662] *Id.* at 28.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	Privacy Program has been [redacted][663] ● It fails to recognize that Meta continues to make additional improvements to enable the Privacy Program to mature. The Assessor recognized in the 2023 Assessment Report that "the effectiveness and maturity of the control environment [of the Privacy Program] has notably improved based on our [2023] Assessment results,"[664] and that "Meta made significant strides in improving the MPP over the two-year period,"[665] For example, the 2023 Assessment Report explains that Meta took steps to remediate the gaps and weaknesses identified during the initial six-month Assessment, as well as during the first biennial Assessment, finding that "[t]hroughout [the first biennial] Assessment Period, Meta implemented over [redacted] Management Action Plans (MAPs) to remediate Gaps and Weaknesses (hereafter Gaps), including [redacted] Gaps identified during the first biennial Assessment Period, and to make improvements that were self-identified by Meta."[666] "Based on the actions noted above, as well as MAPs

[663] Ex. D (2023 Assessment Report) at 13.

[664] *Id.* at 7.

[665] *Id.* at 348.

[666] *Id.* at 6.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	executed throughout the period, [the Assessor] noted improvement in the maturity of the program across [redacted][667] and further recognized that Meta went [redacted][668] ● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[669]
B. Risk Assessments (¶¶ 30–170)	
Paragraphs 30–32 30. Part VII.D of the 2020 Order requires Facebook to "[a]ssess and document, at least once every twelve (12) months, internal and external risks in each area of operation (e.g., employee training and management; developer operations; partnerships with Covered Third Parties; sharing of Covered Information with Covered Third Parties or Facebook-owned affiliates; product research, design, and development; and product marketing and implementation) to the privacy, confidentiality, or integrity of Covered Information that could result in the unauthorized access, collection, use,	**Paragraphs 30–32** purport to set forth the scope of Meta's Risk Assessments domain—as it existed during the initial six-month Assessment—created in response to Part VII.D of the Order, and the timeline for Meta's first company-wide privacy risk assessment under the Order ("PRA 1.0"). These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in the Commission's preliminary factual findings suggest that Meta failed to take any steps required by Part VII. Meta, in fact, took the steps required by Part VII relating to the assessment and

[667] *Id.* at 8.

[668] *Id.* at 13.

[669] Ex. 4 (2021 Assessment Report) at 8.

Preliminary Findings of Fact (PFOF)	Response to PFOF
destruction, or disclosure of such information."[31] 31. In response to Part VII.D, Facebook established, within its Risk Assessments and Remediation Control Domain, an annual "Privacy Risk Assessment (PRA)" process.[32] 32. Facebook started its first annual Privacy Risk Assessment ("PRA 1.0") [redacted] and completed it in October 2020.[33] *** [31] Ex. 3, Part VII.D. [32] Ex. 4 at 40. [33] Ex. 6 at 45 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 1).	documentation of its internal and external privacy risks. ● They omit relevant context about the [redacted] The Order, as announced in July 2019, required the Company to *both* complete a company-wide privacy risk assessment *and* build and begin operating a comprehensive privacy program within 180 days of the Order Effective Date. [redacted]

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][670]
Paragraphs 33–49 33. [redacted][34] 34. [redacted][35] 35. [redacted][36] 36. [redacted][37] 37. [redacted][38]	**Paragraphs 33–49** purport to describe [redacted] These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to [redacted] in any particular manner. ● They omit important details about the context in which Meta developed [redacted][671] While not expressly required by Part VII.D of the Order, Meta undertook an effort [redacted]

[670] *Id*. at 43.

[671] *See* Ex. 15 (PRA 1.0 Playbook); Ex. 49 (PRA 1.0 Report).

Preliminary Findings of Fact (PFOF)	Response to PFOF
38. [redacted][39] 39. [redacted][40]. 40. [redacted][41] 41. [redacted][42] 42. [redacted][43] 43. [redacted][44]	[redacted][672] ● They omit relevant context about the methodology Meta used to develop [redacted][673]

[672] *See* Ex. 15 (PRA 1.0 Playbook) at 6–8; Ex. 49 (PRA 1.0 Report) at 7–11.

[673] *See* Ex. 15 (PRA 1.0 Playbook) at 6–8; Ex. 49 (PRA 1.0 Report) at 7–10; Ex. 51 (Feb. 18, 2022 resp. to Oct. 1, 2021 request 9) at 5–6.

Preliminary Findings of Fact (PFOF)	Response to PFOF
44. [redacted][45] 45. [redacted][46] 46. [redacted].[47] 47. [redacted][48] 48. [redacted][49]	[674] [redacted].[675] ● They omit relevant context about the reasons Meta identified [redacted][676] ● They fail to reflect relevant remediation efforts, including [redacted] Meta evaluated the results of [redacted] and applied the Assessor's feedback in updating [redacted]

[674] *See* Ex. 14 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 10) at 24.

[675] *See id.*

[676] *See* Ex. 6 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 1) at 46; Ex. 15 (PRA 1.0 Playbook) at 7–8; Ex. 49 (PRA 1.0 Report) at 10–11.

Preliminary Findings of Fact (PFOF)	Response to PFOF
49. [redacted].[50] *** [34] Ex. 15 [redacted]) at 6. [35] Ex. 49 [redacted] at 4. [36] Ex. 49 at 3. [37] Ex. 13 [redacted] [38] Ex. 49 at 4. [39] Ex. 49 at 4; Ex. 15 at 7. [40] Ex. 15 at 7-8. [41] Ex. 49 at 6. [42] Ex. 6 at 46 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 1). [43] Ex. 6 at 46 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 1). [44] Ex. 49 at 5. [45] Ex. 6 at 46 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 1). [46] Ex. 6 at 46 (Nov. 19, 2021 resp. to Oct. 1, 2021, request 1). [47] Ex. 15 at 8. [48] Ex. 13, row 397. [49] Ex. 6 at 46 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 1). [50] Ex. 49 at 6.	The result of those efforts was [redacted][677] [redacted][678] [redacted][679] [redacted]

[677] *See* Ex. 6 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 1) at 47; Ex. 6 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 7) at 52.

[678] *See* Ex. 6 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 1) at 47.

[679] [redacted] *See* Ex. 6 (Nov. 19 2021 resp. to Oct. 1, 2021 request 1 at 47; Ex. 21 [redacted] at 12–14).

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][680]
Paragraphs 50–62 50. [redacted][51] 51. [redacted][52] 52. [redacted][53] 53. [redacted][54] 54. [redacted][55] 55. [redacted]	**Paragraphs 50–62** purport to describe [redacted] These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to [redacted] These paragraphs thus misleadingly imply that the cited findings are related to obligations under Part VII of the Order. In adopting a particular methodology [redacted], Meta affirmatively chose to implement procedures beyond those specifically required by the Order. ● They inaccurately suggest that Meta [redacted]

[680] *See* Ex. D (2023 Assessment Report) at 57, 60.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][56] 56. [redacted].[57] 57. [redacted][58] 58. [redacted].[59] 59. [redacted][60] 60. [redacted][61]	[redacted][681] ● They omit important details about the context in which Meta [redacted][682] ● They omit relevant context about [redacted][683] [redacted][684]

[681] *See* Ex. 14 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 10) at 24.

[682] *See* Ex. 15 (PRA 1.0 Playbook) at 9–10; Ex. 49 (PRA 1.0 Report) at 12–16.

[683] *See* Ex. 6 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 4) at 49; Ex. 14 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 9) at 21.

[684] *See* Ex. 14 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 9) at 21–22.

Preliminary Findings of Fact (PFOF)	Response to PFOF
61. [redacted][62] 62. [redacted][63] *** [51] Ex. 49 at 12–16. [52] Ex. 15 at 9. [53] Ex. 15 at 8. [54] Ex. 15 at 9. [55] Ex. 49 at 13. [56] Ex. 15 at 9; Ex. 49 at 12–13. [57] Ex. 15 at 9; Ex. 49 at 12. [58] Ex. 49 at 12. [59] Ex. 49 at 13. [60] Ex. 14 at 22-23 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 10). [61] Ex. 4 at 47–48; Ex. 14 at 22–23 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 10). [62] Ex. 14 at 22–23 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 10). [63] Ex. 49 at 14.	[redacted][685][686][687][688][689][690]

[685] *See id.* at 22.

[686] *See id.*

[687] *See id.* at 21–22; Ex. 4 (2021 Assessment Report) at 47.

[688] *See supra* Section IV.B ¶¶ 30–32.

[689] *See supra* Section IV.B ¶¶ 33–49.

[690] *See* Ex. 14 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 10) at 24.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][691] [redacted][692] [redacted][693]

[691] *See id.*

[692] *See id.*

[693] *See id.* at 22–25.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	• They fail to reflect relevant remediation efforts, including the series of enhancements to the [redacted][694] As the Assessor recognized, and was previewed to the Commission,[695] Meta made [redacted][696] [redacted][697] [redacted]

[694] *See* Ex. D (2023 Assessment Report) at 12.

[695] *See, e.g.*, Ex. 6 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 4) at 48–49.

[696] *See* Ex. D (2023 Assessment Report) at 54–56.

[697] *See id.* at 56.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][698]
Paragraphs 63–85 63. [redacted][64] 64. [redacted][65] 65. [redacted][66] 66. [redacted][67] 67. [redacted][68] 68. As described by Facebook's Chief Privacy Officer, testifying on behalf of Facebook, [redacted]	**Paragraphs 63–85** purport to set forth the method by which Meta conducted [redacted] These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to [redacted] ● The findings in Paragraph 73 omit context about why Meta [redacted][699] ● The findings in Paragraphs 76–81 are incomplete and therefore inaccurate insofar as they [redacted]

[698] *Id.* at 56, 59.

[699] *See* Ex. 6 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 5) at 49–50.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][69] 69. [redacted][70] 70. [redacted].[71] 71. [redacted].[72] 72. [redacted][73] 73. Facebook admitted [redacted][74] 74. [redacted]	[redacted][700] ● They inaccurately imply that the cited findings are related to obligations under Part VII of the Order. In adopting a particular methodology for [redacted], Meta affirmatively chose to implement procedures beyond those specifically required by the Order. ● They fail to reflect relevant remediation efforts, including enhancements to the manner in which Meta [redacted][701] As Meta previewed for the Commission,[702] Meta [redacted]

[700] *See* Ex. 4 (2021 Assessment Report) at 49; Ex. 15 (PRA 1.0 Playbook) at 11–12.

[701] *See* Ex. D (2023 Assessment Report) at 12, 61.

[702] *See, e.g.*, Ex. 14 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 8) at 21.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][75] 75. [redacted][76] 76. [redacted][77] 77. [redacted][78] 78. Facebook admitted that [redacted][79] 79. [redacted][80] 80. The Assessor determined that, [redacted]	[redacted] Both processes were improved for [redacted][703] [redacted][704] In addition, and as was previewed for the Commission,[705] [redacted] ● They omit context about why Meta [redacted][706]

[703] *See* Ex. D (2023 Assessment Report) at 56.

[704] *Id.*

[705] *See, e.g.*, Ex. 6 (Nov. 19, 2021 resp. to Oct. 1, 2021 request at 5) at 50.

[706] *See id.* at 49–50.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][81] 81. [redacted][82] 82. [redacted][83] 83. [redacted][84] 84. [redacted][85] 85. [redacted][86] *** [64] Ex. 49 at 16. [65] Ex. 49 at 16. [66] Ex. 6 at 50 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 5). [67] Ex. 13, Column E. [68] Ex. 13, Columns E, G. [69] Ex. 16 (Jan. 26, 2022 R. 30(b)(6) Michel Protti Dep. Tr.) at 18:4–18. [70] Ex. 49 at 11. [71] Ex. 16 at 108:13–109:6. [72] Ex. 15 at 11. [73] Ex. 15 at 11. [74] Ex. 6 at 49 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 5). [75] Ex. 15 at 11. [76] Ex. 50 (Risk Reduction Analysis Report at 6; Ex. 15 at 12. [77] Ex. 50 at 6.	

Preliminary Findings of Fact (PFOF)	Response to PFOF
[78] Ex. 50 at 5. [79] Ex. 6 at 49 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 5). [80] Ex. 16 at 122:3–12. [81] Ex. 4 at 48. [82] Ex. 16 at 122:13–17. [83] Ex. 50 at 3; Ex. 15 at 12. [84] Ex. 16 at 117:13–16. [85] Ex. 50 at 7. [86] Ex. 50 at 7.	
Paragraphs 86–87 86. The Assessor determined that [redacted][87] 87. The Assessor noted [redacted][88] *** [87] Ex. 4 at 43. [88] Ex. 4 at 44.	**Paragraphs 86–87** purport to describe certain Assessor observations about [redacted], as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta failed to meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta [redacted] in any particular manner or to include the [redacted] In developing [redacted], Meta affirmatively chose to implement procedures beyond those specifically required by the Order. ● They omit relevant context about the Assessor's findings about [redacted][707] ● They omit relevant context about Meta's remediation of the Gaps

[707] *See* Ex. 4 (2021 Assessment Report) at 43–44.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	referenced therein, including as a result of enhancements Meta made [redacted] As set forth in Meta's response to Paragraphs 33–49,[708] which Meta expressly incorporates herein, Meta [redacted] As the Assessor noted, Meta [redacted][709] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted], as reflected in the initial Assessment Report described herein.[710]
Paragraphs 88–106 88. The Assessor also found that [redacted][89] 89. [redacted]	**Paragraphs 88–106** purport to describe certain Assessor observations about the [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to [redacted]

[708] *See supra* Section IV.B ¶¶ 33–49.

[709] *See* Ex. D (2023 Assessment Report) at 60; *see also* Ex. 21 [redacted] at 12–13, 37 [redacted].

[710] *See* Ex. 4 (2021 Assessment Report) at 43–44.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][90] 90. [redacted][91] 91. The Assessor found [redacted][92] 92. The Assessor also found [redacted][93] 93. The Assessor [redacted][94] 94. Facebook agreed that [redacted][95] 95. Facebook added that [redacted]	[redacted] In developing [redacted], Meta affirmatively chose to implement procedures beyond those specifically required by the Order. ● Paragraphs 88–89 discuss [redacted] without providing facts available to the Commission about [redacted] For example, [redacted][711] The presentation also omits that as part of the updates to [redacted], Meta added [redacted][712] ● Paragraphs 90–94 omit that [redacted][713] ● Paragraphs 90–94 also omit that, as reflected in the initial Assessment Report, the Assessor did not identify

[711] *See* Ex. 6 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 1) at 46.

[712] *Id.*

[713] *See* Ex. 17 (Dec. 23, 2021 resp. to Dec. 3, 2021 request 1) at 20.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][96] 96. Facebook explained [redacted][97] 97. Facebook's corporate designee testified that [redacted][98] 98. [redacted] Facebook's Chief Privacy Officer, testifying on behalf of Facebook, agreed that [redacted][99] 99. Facebook's Chief Privacy Officer, on behalf of Facebook, testified that [redacted][100] 100. Facebook agreed [redacted]	any [redacted][714] ● Paragraphs 104–06 omit relevant context from the Witness's testimony regarding Meta's [redacted][715][716] ● They omit relevant remediation efforts Meta has undertaken to [redacted]

[714] *See* Ex. 4 (2021 Assessment Report) at 44.

[715] *See* Ex. 16 (M. Protti Dep.) at 75:14–76:14; 81:9–20.

[716] *See id.* at 76:2–76:14.

Preliminary Findings of Fact (PFOF)	Response to PFOF
101. Facebook's Chief Privacy Officer, testifying on behalf of Facebook, added that [redacted][102]	[redacted] As set forth in Meta's response to Paragraphs 33–49,[717] which Meta expressly incorporates herein, Meta developed [redacted] As the Assessor noted, Meta now has a process to [redacted][718] • They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] as reflected in the initial Assessment Report described herein.[719]
102. As part of its second annual risk assessment ("PRA 2021" , [redacted][103]	
103. Facebook's Chief Privacy Officer, on behalf of Facebook, testified [redacted][104]	
104. [redacted] Facebook's Chief Privacy Officer, testifying on behalf of Facebook, agreed [redacted][105]	
105. Facebook's Chief Privacy Officer also agreed that [redacted][106]	
106. Facebook's Chief Privacy Officer [redacted]	

[717] *See supra* Section IV.B ¶¶ 33–49.

[718] *See* Ex. D (2023 Assessment Report) at 60.

[719] Ex. 4 (2021 Assessment Report) at 43–44.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][107] *** [89] Ex. 4 at 44. [90] Ex. 4 at 44; Ex. 6 at 46 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 1). [91] Ex. 4 at 44; Ex. 6 at 46 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 1). [92] Ex. 4 at 44. [93] Ex. 4 at 44. [94] Ex. 4 at 44. [95] Ex. 17 at 19 (Dec. 23, 2021 resp. to Dec. 3, 2021 request 1). [96] Ex. 17 at 19 (Dec. 23, 2021 resp. to Dec. 3, 2021 request 1). [97] Ex. 6 at 46–47 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 1). [98] Ex. 16 at 50:13–51:9. [99] Ex. 16 at 55:20–56:9. [100] Ex. 16 at 58:7–14. [101] Ex. 17 at 19 (Dec. 23, 2021 resp. to Dec. 3, 2021 request 1). [102] Ex. 16 at 49:8–50:12. [103] Ex. 17 at 20 (Dec. 23, 2021 resp. to Dec. 3, 2021 request 1). [104] Ex. 16 at 73:15–74:5. [105] Ex. 16 at 74:6–17. [106] Ex. 16 at 80:7–24. [107] Ex. 16 at 91:4–21.	
Paragraphs 107–09 107. The Assessor found that [redacted][108] 108. For example, [redacted]	**Paragraphs 107–09** purport to describe certain Assessor observations [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta [redacted], or to do so in any particular manner. In developing [redacted], Meta affirmatively chose to implement procedures beyond those specifically required by the Order.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][109] 109. Facebook [redacted][110] *** [108] Ex. 4 at 44. [109] Ex. 4 at 44. [110] Ex. 4 at 44.	• They omit material facts, and are therefore misleading and inaccurate, insofar as they exclude the Assessor's observation that it did not identify any [redacted][720] • Paragraph 109 inaccurately suggests that Meta should have [redacted] To the contrary, and as described more fully in Meta's response to Paragraphs 33–49,[721] [redacted][722] • They omit relevant remediation efforts Meta has undertaken to [redacted] As set forth in Meta's response to Paragraphs 33–49,[723] which Meta expressly incorporates herein, Meta developed the [redacted] As the Assessor noted, Meta now has a process to [redacted]

[720] *See* Ex. 4 (2021 Assessment Report) at 44.

[721] *See supra* Section IV.B ¶¶ 33–49.

[722] *See* Ex. 6 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 1) at 46.

[723] *See supra* Section IV.B ¶¶ 33–49.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][724] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted], as reflected in the initial Assessment Report described herein.[725]
Paragraphs 110–15 110. The Assessor also identified [redacted][111] 111. For example, the Assessor found [redacted][112] 112. Additionally, the Assessor found [redacted][113]. 113. The Assessor also noted that [redacted]	**Paragraphs 110–15** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta [redacted]. ● They omit relevant context regarding [redacted]. As explained in more detail in Meta's responses to Paragraphs 30–32,[726] in light of the [redacted][727] Among

[724] *See* Ex. D (2023 Assessment Report) at 60.

[725] Ex. 4 (2021 Assessment Report) at 43–44, 50.

[726] *See supra* Section IV.B ¶¶ 30–32.

[727] *See* Ex. 14 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 8) at 19.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][114] 114. Facebook admitted that [redacted] 115. Facebook added that [redacted][116] *** [111] Ex. 4 at 44. [112] Ex. 4 at 44. [113] Ex. 4 at 45. [114] Ex. 4 at 45. [115] Ex. 14 at 19 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 8). [116] Ex. 14 at 19 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 8).	other things, this meant that Meta had to [redacted][728] [redacted][729] [redacted][730] However, as the Assessor found, Meta's decision to [redacted][731] In addition, the Commission's preliminary factual findings omit that [redacted][732] ● They fail to recognize relevant remediation efforts, including [redacted]

[728] *See* Ex. 4 (2021 Assessment Report) at 49.

[729] Ex. 4 (2021 Assessment Report) at 49.

[730] *See id.* at 45; Ex. 14 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 8) at 19.

[731] *See* Ex. 4 (2021 Assessment Report) at 43.

[732] *See* Ex. 6 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 1) at 46.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][733] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted], as reflected in the initial Assessment Report described herein.[734]
Paragraphs 116–20 116. [redacted] *see supra* ¶¶ 50-62), the Assessor identified [redacted][117] 117. [redacted][118] 118. The Assessor determined that [redacted][119] 119. The Assessor also found that [redacted]	**Paragraphs 116–20** purport to describe certain Assessor observations about [redacted], as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to [redacted]. In adopting a particular methodology for [redacted], Meta affirmatively chose to implement procedures beyond those specifically required by the Order.

[733] *See* Ex. 14 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 8) at 19.

[734] Ex. 4 (2021 Assessment Report) at 44–45.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][120] 120. The Assessor determined the [redacted][121] *** [117] Ex. 4 at 45. [118] Ex. 4 at 45. [119] Ex. 4 at 45. [120] Ex. 4 at 45. [121] Ex. 4 at 45.	• They omit relevant context, including [redacted][735][736][737][738] • They fail to acknowledge that Meta [redacted][739]

[735] *See, e.g.*, *id.* at 41.

[736] *See* Ex. 6 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 4) at 47–48 (emphasis added) (quoting NIST Special Publication 800–30 Revision 1, Guide for Conducting Risk Assessments, Appendix H at H-1).

[737] *Id.*

[738] *Id.*

[739] *See* Ex. D (2023 Assessment Report) at 60.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][740] [redacted] the Assessor ultimately found that Meta had effectively remediated [redacted][741] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted], as reflected in the initial Assessment Report described herein.[742]
Paragraphs 121–24 121. The Assessor also determined [redacted][122] 122. The Assessor found [redacted]	**Paragraphs 121–24** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because:

[740] *See* Ex. 21 (PRA 2021 Playbook) at 19.

[741] Ex. D (2023 Assessment Report) at 56, 59.

[742] Ex. 4 (2021 Assessment Report) at 45–46.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][123] [redacted] [redacted][124] 123. The Assessor also found [redacted] [redacted][125] 124. For example, the Assessor concluded that [redacted][126] *** [122] Ex. 4 at 45–46. [123] Ex. 4 at 45. [124] Ex. 4 at 45–46. [125] Ex. 4 at 46. [126] Ex. 4 at 46.	• Nothing in Part VII of the Order required Meta [redacted] In adopting a particular methodology for [redacted], Meta affirmatively chose to implement procedures beyond those specifically required by the Order. • They omit the fact that [redacted][743] • They omit relevant details of mitigating processes. [redacted][744] • They fail to acknowledge the efforts Meta has undertaken since [redacted] As set forth in Meta's response to Paragraphs 50–62 and 116–20,[745] which Meta expressly incorporates herein, Meta remediated the Assessor-identified Gaps related to

[743] *See id.* at 45.

[744] *See* Ex. 14 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 2) at 19.

[745] *See supra* Section IV.B ¶¶ 50–62, 116–20.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted].[746] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted], as reflected in the initial Assessment Report described herein.[747]
Paragraphs 125–28 125. The Assessor further determined that [redacted].[127] 126. For example, the Assessor [redacted].[128] 127. Nevertheless, the Assessor found [redacted].[129]	**Paragraphs 125–28** purport to describe certain Assessor observations about [redacted], as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta [redacted]. In adopting a particular methodology for [redacted], Meta affirmatively chose to implement procedures beyond those specifically required by the Order. ● They omit relevant context related to how Meta [redacted]

[746] *See* Ex. D (2023 Assessment Report) at 60.

[747] Ex. 4 (2021 Assessment Report) at 45–48.

Preliminary Findings of Fact (PFOF)	Response to PFOF
128. Facebook admitted that [redacted][130] *** [127] Ex. 4 at 46. [128] Ex. 4 at 46–47. [129] Ex. 4 at 47. [130] Ex. 14 at 21 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 9).	[redacted] As explained in more detail in Meta's responses to Paragraphs 50–62,[748] [redacted][749] [redacted][750] ● They omit relevant context about remediation introduced [redacted][751] As set forth in Meta's response to Paragraphs 50–62 and 116–20,[752] which Meta expressly incorporates herein, Meta remediated the Assessor-identified Gaps related to [redacted]

[748] *See supra* Section IV.B, Resp. to PFOF ¶¶ 50–62.

[749] *See* Ex. 14 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 9) at 21–22.

[750] *See* Ex. 4 (2021 Assessment Report) at 47; Ex. 14 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 10) at 21–22.

[751] *See* Ex. 14 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 9) at 22.

[752] *See supra* Section IV.B, Resp. to PFOF ¶¶ 50–62, 116–20.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][753] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted], as reflected in the initial Assessment Report described herein.[754]
Paragraphs 129–30 129. The Assessor also found [redacted][131] 130. The Assessor determined [redacted][132] *** [131] Ex. 4 at 47. [132] Ex. 4 at 47.	**Paragraphs 129–30** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta [redacted] In adopting a particular methodology [redacted], Meta affirmatively chose to implement procedures beyond those specifically required by the Order. ● They omit material facts, and are therefore inaccurate, insofar as they fail

[753] *See* Ex. D (2023 Assessment Report) at 60.

[754] Ex. 4 (2021 Assessment Report) at 46–48.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	to include the detail from the 2021 Assessment Report that the Assessor found [redacted][755] ● They fail to recognize that, in response to the Assessor's feedback about establishing [redacted] Meta introduced and completed a [redacted][756] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted], as reflected in the initial Assessment Report described herein.[757]
Paragraphs 131–34 131. Additionally, Facebook [redacted][133] 132. [redacted][134]	**Paragraphs 131–34** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta [redacted]

[755] *Id.* at 47.

[756] *See* Ex. D (2023 Assessment Report) at 62.

[757] Ex. 4 (2021 Assessment Report) at 47.

Preliminary Findings of Fact (PFOF)	Response to PFOF
133. The Assessor concluded [redacted][135] 134. Facebook admitted [redacted][136] *** [133] Ex. 4 at 48; Ex. 14 at 22–23 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 10). [134] Ex. 4 at 48; *see also* Ex. 14 at 22–23 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 10). [135] Ex. 4 at 48. [136] Ex. 14 at 22 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 10).	[redacted] In adopting a particular methodology for [redacted], Meta affirmatively chose to implement procedures beyond those specifically required by the Order. ● They omit relevant context, [redacted][758] As explained more fully in Meta's response to Paragraphs 50–62,[759] [redacted][760]

[758] *See* Ex. 14 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 10) at 23.

[759] *See supra* Section IV.B, Resp. to PFOF ¶¶ 50–62.

[760] *See id.* at 24.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][761] [redacted][762] • They also omit any mention of the [redacted] Meta made to [redacted] as set forth in Meta's response to Paragraphs 50–62 and 116–20,[763] which Meta expressly incorporates herein. • They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted], as reflected in the initial Assessment Report described herein.[764]

[761] *See id.* at 24–25.

[762] *See id.* at 25.

[763] *See supra* Section IV.B, Resp. to PFOF ¶¶ 50–62, 116–20.

[764] Ex. 4 (2021 Assessment Report) at 47–48.

Preliminary Findings of Fact (PFOF)	Response to PFOF
Paragraphs 135–38 135. As the Assessor concluded, [redacted] [*see supra* ¶¶ 71-81], [redacted][137] 136. The Assessor added [redacted][138] 137. As a practical matter, the Assessor determined [redacted][139] 138. For example, the Assessor noted [redacted][140] *** [137] Ex. 4 at 48 (emphasis added). [138] Ex. 4 at 48. [139] Ex. 4 at 48–49. [140] Ex. 4 at 48–49.	**Paragraphs 135–38** purport to describe certain Assessor observations about [redacted], as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta [redacted] In adopting a particular methodology for [redacted], Meta affirmatively chose to implement procedures beyond those specifically required by the Order. ● They omit relevant context, including the fact that, as the Assessor recognized, [redacted][765] They also fail to recognize that because the [redacted]

[765] *See id.* at 49.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][766] • They omit any mention of enhancements Meta introduced [redacted].[767] • They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted], as reflected in the initial Assessment Report described herein.[768]
Paragraphs 139–43 139. The Assessor determined [redacted] *see supra* ¶¶ 64–68) [redacted][141] 140. As a result, the Assessor found that [redacted][142] 141. The Assessor determined [redacted]	**Paragraphs 139–43** purport to describe certain Assessor observations regarding [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: • Nothing in Part VII of the Order required Meta [redacted] • They omit relevant context about the [redacted]

[766] *See* Ex. 6 (Nov. 19, 2021 resp. to Oct. 1 request 5) at 49–50.

[767] *See supra* Section IV.B, Resp. to PFOF ¶¶ 63–85.

[768] Ex. 4 (2021 Assessment Report) at 48–49.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][143] 142. Additionally, [redacted][144] 143. Facebook's Chief Privacy Officer admitted, on behalf of Facebook, that [redacted][145] *** [141] Ex. 4 at 50. [142] Ex. 4 at 50. [143] Ex. 4 at 50. [144] Ex. 20 (Aug. 17, 2020 email fr. M. Protti re Privacy HPM) at 1 (emphasis added). [145] Ex. 16 at 33:17–25.	[redacted][769][770][771] ● They omit the Assessor's most recent findings regarding [redacted] In particular, they omit that, as the Assessor stated in the 2023 Assessment Report, [redacted][772] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on

[769] *See supra* Section IV.B, Resp. to PFOF ¶¶ 30–32.

[770] *See* Ex. 6 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 5) at 49–50.

[771] *See* Ex. 4 (2021 Assessment Report) at 50.

[772] *See* Ex. D (2023 Assessment Report) at 59.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	users in connection with the Assessor's observations regarding [redacted] as reflected in the initial Assessment Report, described herein.[773]
Paragraphs 144–58 144. Part VII.E of the Order requires Facebook's privacy program safeguards to "control for the material internal and external risks" it identified in its annual risk assessment.[146] 145. The Order further requires each safeguard to be "based on the volume and sensitivity of the Covered Information that is at risk, and the likelihood that the risk could be realized and result in the unauthorized access, collection, use, destruction, or disclosure of the Covered Information."[147] 146. Facebook, however, admitted [redacted] [148] 147. Facebook also admitted that [redacted] [149] 148. Facebook further admitted that [redacted]	**Paragraphs 144–58** purport to describe certain Assessor and FTC observations regarding [redacted], as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● They omit relevant context about the [redacted]. The Order, as announced in July 2019, required the Company to both complete a company-wide privacy risk assessment and build and begin operating a comprehensive privacy program within 180 days of the Order Effective Date. However, because of the court approval process, the Company had no reliable way to predict when the Order would become effective and trigger that common deadline. [redacted] It is therefore misleading to suggest, as Paragraph 152 does, that Meta had 15 months to both complete [redacted] and develop and [redacted]

[773] Ex. 4 (2021 Assessment Report) at 50.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][150] 149. The Assessor observed that [redacted][151] 150. [redacted][152] 151. Facebook, however, agreed to the Order's six-month timeframe within which to conduct the risks analysis and safeguard build. 152. Additionally, because of the nine-month delay between the parties' agreement to the Order and its ultimate entry by the Commission, Facebook had 15 months, not six, to complete the PRA and Safeguard build. 153. [redacted] 154. [redacted]	[redacted], the Commission's preliminary factual findings in Paragraphs 148–49 are incomplete and therefore inaccurate insofar as they omit that, as the Assessor ultimately found, Meta's approach to [redacted][774] ● They misstate key facts and omit relevant context from the [redacted][775]

[774] *See* Ex. 4 (2021 Assessment Report) at 43.

[775] *See* Ex. 69 (FBCO-ASSESS-XV-00014622 at 1.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][153] 155. [redacted][154][redacted][155] 156. A PRA 1.0 "Kickoff Meeting" slide deck [redacted][156][157] 157. [redacted][158] 158. Facebook's Chief Privacy Officer testified, on behalf of Facebook, that [redacted]	[redacted][776][777][778] ● They omit relevant context about the Witness's testimony regarding [redacted]

[776] *See id.* at 2.

[777] *Id.*

[778] *See* Ex. 19 (FBCO-ASSESS-XV-00020480 at 2.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][159] *** [146] Ex. 3, Part VII.E. [147] Ex. 3, Part VII.E. [148] Ex. 6 at 50 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 5). [149] Ex. 16 at 109:20–111:14. [150] Ex. 16 at 106:19–108:7. [151] Ex. 4 at 43. [152] Ex. 14 at 19 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 8). [153] Ex. 69 (FBCO-ASSESS-XV-00014622 at 2. [154] Ex. 19 (Oct. 25, 2019 email fr. M. Protti re Privacy HPM) at 2. [155] Ex. 19 at 2. [156] Ex. 74 (Privacy Risk Assessment: Introduction and Kickoff Meeting for Business Leads) at 9. [157] Ex. 74 at 12–13. [158] Ex. 75 [redacted] at 1. [159] Ex. 16 at 33:3–16.	[redacted][779] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted], as reflected in the initial Assessment Report described herein.[780]
Paragraphs 159–67 159. Part VII.J of the Order requires Facebook to "[e]valuate and adjust the Privacy Program" in response to "material changes to Respondent's operations or business arrangements, a Covered Incident,[160] [and] new or more efficient technological or operational methods to control for risks."[161] 160. At a minimum, Facebook must evaluate the Privacy Program once annually and modify it as necessary based on the evaluation.[162] 161. [redacted]	**Paragraphs 159–67** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta [redacted] More specifically, Meta was not required to

[779] *See* Ex. 16 (M. Protti Dep.) at 33:21–25.

[780] *See* Ex. 4 (2021 Assessment Report) at 43.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][163] 162. [redacted][164] 163. Facebook's Chief Privacy Officer, testifying on behalf of Facebook, agreed [redacted][165] 164. [redacted][166] 165. [redacted][167] 166. Consequently, the Assessor found that [redacted][168] 167. The Assessor concluded: [redacted]	evaluate the Privacy Program until October 2021 at the earliest, or one year after the Privacy Program was established and well after the initial Assessment period concluded. In adopting procedures for [redacted], Meta thus affirmatively chose to implement procedures beyond those specifically required by the Order. ● They fail to note that between October 2020 and July 2021, i.e., the time of the initial six-month Assessment, Meta was in the process [redacted][781][782] ● They inaccurately suggest that [redacted]

[781] *See* Ex. 6 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 7) at 52.

[782] Ex. 4 (2021 Assessment Report) at 49–50.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][169] ***	[redacted][783] [redacted][784] ● They omit material facts, insofar as they fail to note that the Assessor conducted an independent review of [redacted] and concluded that [redacted][785] ● They fail to recognize relevant remediation efforts, including that, as the Assessor found, Meta has remediated [redacted][786] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted]

[160] A "Covered Incident" is "any instance in which Respondent has verified or otherwise confirmed that the Covered Information of 500 or more Users was or was likely to have been accessed, collected, used, or shared by a Covered Third Party in violation of Respondent's Platform Terms." Ex. 3, Definition C.
[161] Ex. 3, Part VII.J.
[162] Ex. 3, Part VII.J.
[163] Ex. 4 at 49.
[164] Ex. 4 at 49.
[165] Ex. 16 at 140:1–17.
[166] Ex. 6 at 52 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 7).
[167] Ex. 73 at 17 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 6).
[168] Ex. 4 at 49.
[169] Ex. 4 at 49.

[783] *See* Ex. 16 (M. Protti Dep.) at 140:1–141:4.

[784] *Id.*

[785] Ex. 4 (2021 Assessment Report) at 49.

[786] *See* Ex. D (2023 Assessment Report) at 55, 59–60.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted], as reflected in the initial Assessment Report described herein.[787]
Paragraphs 168–70 168. [redacted][170] 169. The Assessor, however, found [redacted][171] 170. Facebook admitted that [redacted][172] *** [170] Ex. 4 at 50; Ex. 14 at 25 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 11). [171] Ex. 4 at 50. [172] Ex. 14 at 25 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 11).	**Paragraphs 168–70** purport to describe certain Assessor observations about [redacted], as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta [redacted] In adopting procedures for [redacted], Meta affirmatively chose to implement procedures beyond those specifically required by the Order. ● They omit relevant context about the [redacted][788] They also fail to recognize that both during and after the initial Assessment, Meta enhanced its processes and controls in this area, including through [redacted]

[787] Ex. 4 (2021 Assessment Report) at 49–50.

[788] *See* Ex. 14 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 11) at 25.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][789] ● They fail to note that the Assessor's observations [redacted] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] as reflected in the initial Assessment Report described herein.[790]
C. Privacy Review (¶¶ 171–370)	
Paragraphs 171–76 171. The Order requires, specifically with respect to Facebook's collection, use, or sharing of Covered Information in any new or modified product, service, or practice, that Facebook must, prior to implementing each new or modified product, service, or practice: (i) conduct a privacy review that assess [sic] the risks to the privacy, confidentiality, and integrity of the Covered Information, the safeguards in place to control such risks, and the sufficiency of the user notice and, if necessary, consent; and (ii) document a description of each reviewed product, service, or practice that was ultimately implemented; any safeguards implemented to	**Paragraphs 171–76** purport to set forth the scope of Meta's Privacy Review Domain created in response to Part VII.E.2 of the 2020 Order, as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Paragraphs 171–72 falsely represent Meta's obligations under the Order with respect to Privacy Review, as they do not include facts available to the Commission about how Meta's Privacy Review program exceeds the requirements of Part VII of the Order.

[789] *See id.*

[790] Ex. 4 (2021 Assessment Report) at 50.

Preliminary Findings of Fact (PFOF)	Response to PFOF
control for the identified risk; and the decision or recommendation made as a result of the review (e.g., whether the practice was approved, approved contingent upon safeguards or other recommendations being implemented, or rejected).[173] 172. The Order further requires that, for each new or modified product, service, or practice that presents a material risk to the privacy, confidentiality, or integrity of Covered Information,[174] Facebook must prepare a written report (Privacy Review Statement) describing (i) the types of Covered Information it will collect, and how it will use, retain, and share that information; (ii) the notice it will send to users and any mechanisms by which the users will consent; (iii) any risks to the privacy, confidentiality, and integrity of Covered Information; (iv) existing safeguards that control for the identified risks, and whether any new safeguards must be implemented; and (v) any other known safeguards or other procedures that would mitigate the risks but were not implemented (e.g., minimizing the amount of types of information collected, used, or shared) and each reason those alternates were not implemented.[175] 173. Facebook stated that [redacted]	[redacted][791] ● Paragraph 172 misstates the Privacy Review Statement requirements under the Order.[792] Part VII.E.2.b.ii requires the Privacy Review Statement to describe "[t]he notice provided to Users about, and the mechanism s), if any, by which Users will consent to, the collection of their Covered Information and the purposes for which such information will be used, retained, or shared" by Meta.[793] ● Paragraph 173 fails to include facts available to the Commission about how Meta has [redacted][794] As acknowledged by the Assessor, [redacted]

[791] *See id.* at 66.

[792] This paragraph is also inaccurate because Paragraph 172 misstates the requirements of the Order. Part VII.E.2.B. refers to "the amount or type(s) of Covered Information," not the "amount of types of information." *See* Ex. 3 (2020 FTC Order).

[793] Order, Part VII.E.2.b.ii.

[794] *See* Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 1) at 13.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][176] 174. Facebook stated that [redacted][177] 175. Moreover, Facebook stated that [redacted][178] 176. At his deposition, Chief Executive Officer Mark Zuckerberg acknowledged [redacted][179] [173] Ex. 3, Part VII.E.2.a.	[redacted][795] ● Paragraph 174 misattributes [redacted][796] [redacted][797] ● Paragraph 175 fails to include facts available to the Commission that Meta's Privacy Review process requires [redacted][798] Further, [redacted][799] ● Paragraph 176 wrongly implies that Mr. Zuckerberg was [redacted]

[795] *See* Ex. 4 (2021 Assessment Report) at 64.

[796] PFOF ¶ 274; Ex. 11 (Oct. 24, 2020 Compliance Report) at 15.

[797] *See, e.g.*, Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 1) at 13.

[798] Ex. 5 (Oct. 29, 2021 resp. To Aug. 27, 2021 requests 6–7) at 16.

[799] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[174] For example, a completely new product, service, or practice that has not been previously subject to a privacy review; a material change in the sharing of Covered Information with a Facebook-owned affiliate; a modified product, service, or practice that includes a material change in the collection, use, or sharing of Covered Information; a product, service, or practice directed to minors; or a product, service, or practice involving health, financial, biometric, or other similarly sensitive information. Ex. 3, Part VII.E.2.b. [175] Ex. 3, Part VII.E.2.b. [176] Ex. 11 (Oct. 24, 2020 Compliance Report) at 15. [177] Ex. 11 at 15. [178] Ex. 11 at 15. [179] Ex. 43 at 75:5–16.	[redacted] Rather, Mr. Zuckerberg was [redacted] This paragraph is also misleading to the extent that, as framed, it could be read to inaccurately suggest that Mr. Zuckerberg indicated that Meta's prior processes [redacted] were insufficiently rigorous [redacted][800] The paragraph omits Mr. Zuckerberg's [redacted].[801] The processes Meta subsequently developed for [redacted] go well beyond the requirements of the Order, [redacted] Additionally, this paragraph [redacted][802]
Paragraphs 177–82 177. [redacted][180]	**Paragraphs 177–82** purport to set forth details about Meta's [redacted] as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● For the reasons set forth in Meta's

[800] PFOF ¶ 176.

[801] Ex. 43 (M. Zuckerberg Dep.) at 76:4–25.

[802] *Id.* at 150:10–11.

Preliminary Findings of Fact (PFOF)	Response to PFOF
178. [redacted][181] 179. [redacted][182] 180. According to Facebook, [redacted][183] 181. To accomplish this objective and satisfy the Order requirements, Facebook [redacted].[184] 182. [redacted]	response to Paragraphs 171–76, *supra*, which Meta expressly incorporates herein, they are inaccurate. ● Paragraph 177 wrongly suggests that [redacted], Meta [redacted][803] ● Paragraph 179 fails [redacted][804] ● Paragraph 180 does not include facts available to the Commission that, as explained by the Assessor, [redacted][805] Moreover, the [redacted]

[803] *See* Ex. 4 (2021 Assessment Report) at 67.

[804] *Id.*

[805] *Id.* at 66 (emphasis added).

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][185] *** [180] Ex. 11 at 15; Ex. 79 (Dec. 17, 2021 R. 30(b)(6) Michel Protti Dep. Tr.) at 15:10–14. [181] Ex. 79 at 12:10–13:1. [182] Ex. 79 at 13:2–6. [183] Ex. 11 at 15. [184] Ex. 5 at 13, 18, 20 (Oct. 29, 2021 resp. to Aug. 27, 2021 requests 1, 12, and 19); Ex. 6 at 9–11 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 2). [185] Ex. 5 at 13, 18, 20 (Oct. 29, 2021 resp. to Aug. 27, 2021 requests 1, 12, and 19); Ex. 6 at 9–11 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 2).	[redacted][806] ● Paragraphs 181–82 omit that Meta's [redacted] exceeds the requirements under the Order. Specifically, Part VII.E.2.a of the Order requires Meta to document "any safeguards being implemented to control for the identified risks" in the Privacy Review, but does not require Meta to [redacted][807] [redacted][808] ● Paragraphs 181–82 omit that Meta's [redacted][809]
Paragraphs 183–84 183. The Assessor found, [redacted]	**Paragraphs 183–84** purport to set forth the Assessor's evaluation of [redacted], as it existed during the initial six-month Assessment.

[806] *See* Ex. 7 (Dec. 3, 2021 resp. to Oct. 1, 2021 request 10) at 29.

[807] Order, Part VII.E.2.a.

[808] *See* Ex. 4 (2021 Assessment Report) at 70.

[809] Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 requests 6–7) at 16.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][186] 184. However, the Assessor concluded that [redacted][187] *** [186] Ex. 4 at 73. [187] Ex. 4 at 73.	These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Paragraph 183 omits that the Assessor [redacted][810] ● Paragraph 184 wrongly implies that the Assessor's [redacted][811] Part VII.E of the Order does not [redacted] much less require Meta's Privacy Review process—which, as noted *supra*, goes well beyond Order requirements—to [redacted][812]

[810] Ex. 4 (2021 Assessment Report) at 73.

[811] *See* Order, Part VII.

[812] PFOF ¶ 184.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	• Paragraph 184 wrongly asserts that the Assessor found that [redacted][813] At the time of the 2021 Assessment, the Assessor found [redacted][814] As acknowledged by the Assessor in its 2023 Assessment Report, Meta "made substantial progress to address previously identified Gaps" by implementing a number of improvements to the Privacy Review process [redacted][815] As discussed further, *infra*, Meta took steps to remediate each of the three categories

[813] *Id.*

[814] *See* Ex. 4 2021 Assessment Report) at 73.

[815] Ex. D (2023 Assessment Report) at 9, 77.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	of gaps.
Paragraphs 185–90 185. [redacted] 186. Specifically, [redacted][188] 187. Facebook [redacted][189] 188. The Assessor found [redacted]	**Paragraphs 185–90** purport to describe certain Assessor observations [redacted] as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to [redacted] In adopting these more stringent internal policies, Meta affirmatively chose to implement policies with requirements beyond those specifically required by the Order. ● Paragraph 185 fails to mention that [redacted][816] ● Paragraph 186 omits that [redacted][817] ● Paragraph 187 does not [redacted]

[816] *See* Ex. 4 (2021 Assessment Report) at 66.

[817] *See id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][190] 189. In fact, the Assessor identified [redacted][191] 190. Facebook conceded [redacted][192] [188] Ex. 5 at 13 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 13); Ex. 6 at 9–11 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 2); Ex. 79 at 15:15–16:7. [189] Ex. 4 at 4, 73; Ex. 79 at 16:8–17:4. [190] Ex. 4 at 4, 73. [191] Ex. 4 at 4, 73. [192] Ex. 4 at 74; Ex. 5 at 13 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 1).	[redacted][818] ● Paragraphs 188–90 do not reflect additional facts available to the Commission about maturation and enhancements Meta made to help ensure [redacted][819][820] ● Paragraphs 188–90 omit the Assessor's recognition of the improvements Meta made during the Year 2–3 Assessment period to enhance [redacted] ○ [redacted]

[818] Ex. D (2023 Assessment Report) at 151.

[819] *Id.* at 83; *see also* Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 1) at 13.

[820] *See* Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 1) at 13.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted],[821] ○ [redacted][822] ○ [redacted][823] ○ [redacted]

[821] Ex. D (2023 Assessment Report) at 8.

[822] *Id.* at 83.

[823] *Id.* at 84.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][824] ○ [redacted][825] ● Paragraphs 188–90 omit the Assessor's most recent findings regarding the steps Meta took to remediate the [redacted] In particular, the Assessor stated in its 2023 Assessment Report that [redacted][826] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] described herein.[827]

[824] *Id.* at 85.

[825] *Id.* at 79.

[826] *Id.* at 93.

[827] *See* Ex. 4 (2021 Assessment Report) at 74.

Preliminary Findings of Fact (PFOF)	Response to PFOF
Paragraphs 191–99 191. [redacted] the Assessor observed [redacted][193] 192. [redacted][194] 193. [redacted][195] 194. [redacted][196] 195. The project owner is often a product manager, typically embedded in a product team responsible for the given product or project.[197] 196. [redacted]	**Paragraphs 191–99** purport to describe certain Assessor observations about Meta's [redacted] as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta [redacted] ● They are inaccurate for the reasons set forth in Meta's response to Paragraphs 786–92, *infra*, which Meta expressly incorporates herein. ● Paragraph 191 wrongly claims that the Assessor found that [redacted] The Assessor [redacted][828] [redacted][829] To the contrary, the Assessor [redacted][830] and that [redacted]

[828] *See id.* at 74–75.

[829] *See id.*

[830] *Id.* at 75.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][198] 197. [redacted][199] 198. [redacted][200] 199. [redacted][201]	[redacted][831] ● Paragraph 192 wrongly suggests [redacted][832] ● Paragraphs 193–95 omit that during the initial six-month Assessment period, Meta [redacted][833] Among other things, [redacted]

[193] Ex. 4 at 74.
[194] Ex. 79 at 17:13–25.
[195] Ex. 79 at 17:6–12.
[196] Ex. 79 at 13:7–15.
[197] Product teams are the first-line teams that develop, deploy and update Facebook's products and services. Ex. 79 at 18:1–11.
[198] Ex. 4 at 74.

[831] Ex. 77 (May 13, 2022 resp. to Mar. 17, 2022 request 11) at 3.

[832] *Id.*

[833] Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 10.i) at 14.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[199] Ex. 4 at 74. [200] Ex. 79 at 20:2–21:19. [201] Ex. 79 at 21:20–24:5.	[redacted][834] ● Paragraph 196 omits that [redacted][835] [redacted][836] ● Paragraphs 196–99 omit that Meta continued to refine and improve [redacted] following the first Assessment. [redacted][837] [redacted][838] Specifically, [redacted]

[834] *Id.*

[835] *See* Ex. 4 (2021 Assessment Report) at 69.

[836] *See id*.

[837] *See* Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 10.i) at 15.

[838] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][839] Finally, [redacted][840] ● Paragraphs 196–99 omit the Assessor's most recent findings in its 2023 Assessment Report that [redacted]

[839] *Id.*

[840] Ex. 51 at 4 (Feb. 18, 2022 resp. to Dec. 2, 2021 request 11 .

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][841] • Paragraphs 197–98 omit that Meta [redacted][842] These paragraphs also fail to discuss that [redacted][843] • Paragraph 199 omits that Meta [redacted][844] Going well beyond the requirements of the Order—which do not require Meta to provide training beyond the Annual Privacy Training—Meta affirmatively [redacted][845] Moreover, [redacted]

[841] Ex. D (2023 Assessment Report) at 94.

[842] Ex. 77 (May 13, 2022 resp. to Mar. 17, 2022 request 11) at 4.

[843] Ex. 79 (M. Protti Dep.) at 20:11–21:7.

[844] Ex. 73 (Apr. 29, 2022 resp. to Mar. 17, 2022 request 9) at 9.

[845] *Id.* at 10.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted] which again was not required under the Order.[846] ● Paragraphs 196–99 omit the Assessor's most recent observations in its 2023 Assessment Report that [redacted][847] For instance, [redacted][848] Meta also [redacted][849] In addition, the Assessor observed that Meta had [redacted][850]

[846] *See* Ex. 77 (May 13, 2022 resp. to Mar. 17, 2022 request 11) at 3.

[847] Ex. D (2023 Assessment Report) at 85.

[848] *Id.* at 77.

[849] *Id.* at 80.

[850] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	• Paragraph 199 omits that [redacted][851] • They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] described herein.[852]
Paragraphs 200–06 200. [redacted][202] 201. The Assessor found [redacted][203] 202. The Assessor found [redacted][204] 203. During the assessment, Facebook [redacted]	**Paragraphs 200–06** purport to describe certain Assessor observations about [redacted] as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: • Nothing in Part VII of the Order required Meta to [redacted] • They are inaccurate for the reasons set forth in Meta's response to Paragraphs 185–99, *supra*, which Meta expressly incorporates herein. • Paragraph 200 wrongly asserts that

[851] *See* Ex. 73 (Apr. 29, 2022 resp. to Mar. 17, 2022 request 9) at 10.

[852] *See* Ex. 4 (2021 Assessment Report) at 75.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][205] 204. [redacted][206] 205. Facebook acknowledged [redacted][207] 206. [redacted][208] [202] Ex. 4 at 75. [203] Ex. 4 at 75. [204] Ex. 4 at 74. [205] Ex. 4 at 74. [206] Ex. 4 at 74. [207] Ex. 6 at 9–11 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 2). [208] Ex. 6 at 9–11 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 2).	Meta [redacted] As noted in the initial Assessment Report, Meta [redacted][853] ● Paragraphs 200–02 fail to mention that Meta [redacted][854] ● Paragraphs 200–05 omit the Assessor's recent findings in its 2023 Assessment Report that Meta "remediated the Gap" related to the [redacted][855] ● Paragraphs 200–05 omit the Assessor's recent findings in its 2023 Assessment

[853] *Id.* at 74.

[854] *See* Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request) at 2.

[855] *See* Ex. D (2023 Assessment Report) at 79, 96.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	Report regarding improvements Meta made to the Privacy Review process that help to [redacted][856] For instance, [redacted][857] ● Paragraph 206 omits that [redacted][858] Moreover, as the Assessor recognized in the 2023 Assessment Report, [redacted][859] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted]

[856] *Id.* at 84.

[857] *Id.* at 84–85.

[858] *Id.* at 80.

[859] *Id.* at 85.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted] described herein.[860]
Paragraphs 207–13 207. The Assessor identified [redacted][209] 208. [redacted][210] 209. [redacted][211] 210. [redacted]	**Paragraphs 207–13** purport to describe certain Assessor observations about [redacted] as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to [redacted] ● They are inaccurate for the reasons set forth in Meta's response to Paragraphs 185–206, *supra*, which Meta expressly incorporates herein. ● They fail to discuss that Meta [redacted][861] They also omit that [redacted][862]

[860] *See* Ex. 4 (2021 Assessment Report) at 74.

[861] Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 22) at 22.

[862] Ex. 4 (2021 Assessment Report) at 75.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][212] 211. The Assessor concluded that, [redacted][213] 212. Facebook acknowledged [redacted][214] 213. [redacted][215] [redacted][216]	[redacted][863] ● Paragraph 209 wrongly states that the [redacted] As the Assessor stated in its 2021 Assessment Report, [redacted][864] [redacted][865] ● Paragraph 213 relies on deposition testimony to wrongly assert [redacted]

[209] Ex. 4 at 75.
[210] Ex. 4 at 75.
[211] Ex. 79 at 61:14–62:11.
[212] Ex. 4 at 75.
[213] Ex. 4 at 75–76.
[214] Ex. 4 at 75–76.
[215] [redacted] Ex. 79 at 61:2–13.
[216] Ex. 79 at 59:23–60:3.

[863] Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 3) at 9–10.

[864] Ex. 4 (2021 Assessment Report) at 75 (emphasis added).

[865] *See* Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 3) at 12.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][866] [redacted][867] • Paragraph 213 wrongly asserts that [redacted] As noted in the initial Assessment Report, [redacted][868] • They omit the Assessor's recent findings in its 2023 Assessment that Meta [redacted][869] • They omit that Meta established the [redacted][870] As the Assessor observed in its 2023 Assessment Report, [redacted]

[866] Ex. 79 (M. Protti Dep.) at 55:5–15.

[867] Ex. 4 (2021 Assessment Report) at 234 (emphasis added).

[868] *Id.* at 68 (emphasis added).

[869] Ex. D (2023 Assessment Report) at 83.

[870] *See id.* at 84.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][871] ● They fail to discuss the maturation of Meta's [redacted] For instance, following the initial Assessment, Meta implemented [redacted][872] Moreover, Meta implemented additional enhancements to [redacted][873] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] described herein.[874]

[871] *Id.*

[872] *Id.* at 82–83.

[873] *See id.*

[874] *See* Ex. 4 (2021 Assessment Report) at 75.

Preliminary Findings of Fact (PFOF)	Response to PFOF
Paragraphs 214–51 214. The Assessor found [redacted][217] 215. [redacted][218] 216. [redacted][219] 217. [redacted][220] 218. [redacted]	**Paragraphs 214–51** purport to describe certain Assessor observations about [redacted] as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to [redacted] ● They are inaccurate for the reasons set forth in Meta's response to Paragraphs 185–90, *supra*, which Meta expressly incorporates herein. ● They fail to mention that [redacted][875] ● Paragraph 214 wrongly suggests the Assessor found that Meta [redacted] The Assessor [redacted][876] The Assessor did not [redacted]

[875] *See* Ex. D (2023 Assessment Report) at 80.

[876] *See* Ex. 4 (2021 Assessment Report) at 230.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][221] 219. [redacted][222] 220. [redacted].[223] 221. [redacted][224] 222. [redacted][225] 223. [redacted][226] 224. [redacted]	[redacted][877] ● Paragraph 215 wrongly characterizes [redacted][878] [redacted].[879] Meta also implemented [redacted][880] ● Paragraphs 218, 222, and 224 fail to mention [redacted][881] ● Paragraphs 225–28 omit the Assessor's acknowledgement that [redacted][882] ● Paragraphs 214–51 fail to discuss Meta's development and

[877] *See id.* at 88.

[878] *See* Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 1) at 14.

[879] *See* Ex. D (2023 Assessment Report) at 77–78, 95.

[880] *See* Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 1) at 15.

[881] *See* Ex. D (2023 Assessment Report) at 83.

[882] Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 19) at 21.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][227] 225. The Assessor reported that [redacted][228] 226. [redacted][229] 227. [redacted][230] 228. [redacted][231] 229. [redacted]	implementation of [redacted][883][884][885][886][887] • Paragraphs 225–42 misleadingly rely on [redacted] ○ *First*, [redacted]

[883] Ex. D (2023 Assessment Report) at 80–82.

[884] *Id.* at 80.

[885] *Id.*

[886] *See id.*

[887] *See id.* at 83.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][232] 230. [redacted][233] 231. [redacted][234] 232. [redacted][235] 233. [redacted] the Assessor found [redacted][236] 234. Facebook conceded that [redacted][237] 235. [redacted]	[redacted][888] For instance, [redacted][889] Moreover, [redacted][890] ○ *Second*, contrary to Paragraphs 226–28, [redacted] As the Assessor acknowledged in the initial Assessment Report, [redacted]

[888] *See* Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 requests 4, 14–15) at 13.

[889] *Id.*

[890] *See* Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 4) at 13.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][238] [redacted][239] 236. [redacted][240] 237. [redacted][241] 238. Facebook [redacted][242] 239. [redacted]	[redacted][891] And while [redacted][892] ○ *Third*, with respect to the Privacy Assessment, contrary to Paragraphs 233–34, Meta never [redacted][893] ○ *Finally*, paragraphs 239–41 speculate that [redacted]

[891] Ex. 4 (2021 Assessment Report) at 76.

[892] *Id.*

[893] Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 14) at 14.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][243] 240. [redacted][244] 241. [redacted][245] 242. Facebook [redacted][246] 243. Facebook [redacted][247] 244. [redacted]	[redacted][894] [redacted][895] Furthermore, [redacted][896] ● Paragraphs 243–47 fail to sufficiently delineate [redacted] Paragraph 247 [redacted][897] The Assessor [redacted][898][899]

[894] PFOF ¶ 241.

[895] *See* Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 4) at 13.

[896] Ex. 79 (M. Protti Dep.) at 45:21–46:11.

[897] PFOF ¶ 247.

[898] *See* Ex. D (2023 Assessment Report) at 81.

[899] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][248] 245. For example, [redacted][249][] 246. [redacted][250] 247. [redacted][251] 248. [redacted]	[redacted][900] [redacted][901] As described further, *infra* Section IV.C, Resp. to PFOF ¶¶ 318–27, Meta developed [redacted][902] ● They omit the Assessor's recent observations that [redacted][903] [redacted][904] ● Paragraphs 248 and 251 fail to mention that [redacted][905] These paragraphs further omit that [redacted]

[900] *Id.*

[901] *Id.*; *see also* Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 4) at 13.

[902] *See* Ex. D (2023 Assessment Report) at 81, 95.

[903] *Id.* at 84.

[904] *Id*.

[905] Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 23) at 19.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][252] 249. [redacted][253] 250. Part VII.E.2.a. of the Order requires Facebook to conduct a privacy review "[p]rior to implementing each new or modified product, service, or practice."[254] 251. At his deposition, Chief Executive Officer Mark Zuckerberg was asked [redacted] Zuckerberg responded, [redacted][255] *** [217] Ex. 4 at 88; Ex. 5 at 22 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 22). [218] Ex. 4 at 88; Ex. 5 at 13, 22 (Oct. 29, 2021 resp. to Aug. 27, 2021 requests 1, 22). [219] Ex. 79 at 27:19–28:13. [220] Ex. 79 at 29:5–20, 30:13–17, 32:6–11. [221] Ex. 79 at 29:21–30:4. [222] Ex. 79 at 33:19–34:4. [223] Ex. 79 at 30:18–31:8, 31:19–32:11. [224] Ex. 79 at 30:18–31:8, 31:19–32:11. [225] Ex. 79 at 33:9–34:4. [226] Ex. 79 at 34:5–19.	[redacted][906] ● Paragraph 249 omits that [redacted][907] This paragraph similarly fails to mention that [redacted][908] Nor does this paragraph provide important context around [redacted] As noted in the 2021 Assessment Report, [redacted][909] ● Paragraph 250 wrongly implies that Part VII.E.2.a of the Order requires Meta to design and implement safeguards that require a Privacy Review for new or modified products, services, or practices that do not involve the collection, use, or sharing

[906] *Id.*

[907] *Id.* at 19–20.

[908] *Id.*

[909] *See* Ex. 4 (2021 Assessment Report) at 70.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[227] Ex. 79 at 34:5–19. [228] Ex. 4 at 5; Ex. 79 at 28:14–25. [229] Ex. 4 at 76–77. [230] Ex. 4 at 76–77. [231] Ex. 4 at 76. [232] Ex. 4 at 76. [233] Ex. 4 at 81–82. [234] Ex. 4 at 81–82; Ex. 79 at 49:1–22. [235] Ex. 4 at 81–82. [236] Ex. 4 at 81–82. [237] Ex. 6 at 9–11 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 2); Ex. 79 at 49:18–50:1. [238] [redacted] Ex. 79 at 53:22–54:9. [239] Ex. 79 at 50:2–52:7. [240] Ex. 6 at 9–13 (Nov. 19, 2021 resp. to Aug. 27, 2021 requests 2, 4). [241] Ex. 79 at 35:8–18. [242] Ex. 6 at 9–13 (Nov. 19, 2021 resp. to Aug. 27, 2021 requests 2, 4). [243] Ex. 6 at 9–13 (Nov. 19, 2021 resp. to Aug. 27, 2021 requests 2, 4). [244] Ex. 79 at 43:12–44:24. [245] Ex. 79 at 44:25–45:12. [246] Ex. 79 at 47:12–19. [247] Ex. 79 at 35:19–22. [248] Ex. 79 at 36:3-8, 36:9–15. [249] Ex. 79 at 46:12–47:11. [250] Ex. 79 at 35:23–36:2. [251] Ex. 79 at 36:16–37:9. [252] Ex. 6 at 19–20 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 23). [253] Ex. 6 at 19–20 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 23). [254] Ex. 3, Part VII.E.2.a. [255] Ex. 43 at 220:4–18.	of Covered Information.[910] • They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted][911]
Paragraph 252 252. The Assessor found that [redacted]	**Paragraph 252** purports to describe certain Assessor observations about [redacted] as it existed during the initial six-month Assessment.

[910] *See* Order, Part VII.E.2.a.

[911] *See* Ex. 4 (2021 Assessment Report) at 71–83.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][256] [256] Ex. 4 at 73, 78.	This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements because: ● It incorrectly states that the Assessor concluded that [redacted] At the cited references in the initial six-month Assessment, the Assessor made no reference to Order compliance.[912] ● It also omits the Assessor's finding during the initial six-month Assessment [redacted][913] Additionally, in the two-year period since the initial Assessment, [redacted][914] Meta is further improving the [redacted][915] To further improve [redacted]

[912] *See* Ex. 4 (2021 Assessment Report) at 73, 78.

[913] *Id.* at 73.

[914] Ex. D (2023 Assessment Report) at 10.

[915] *Id.* at 86.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][916] ● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted][917]
Paragraphs 253–62 253. [redacted][257] 254. [redacted][258] 255. [redacted]	**Paragraphs 253–62** purport to describe certain Assessor observations about [redacted] as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to [redacted] Rather, Meta is required under the Order only to "[d]esign, implement, maintain, and document safeguards" that include "conducting a privacy review that *assesses the risks* to the privacy, confidentiality, and Integrity of the Covered Information."[918] ● Paragraphs 253–62 omit context and details regarding [redacted]

[916] *Id.*

[917] *See id.* at 73, 78.

[918] *See* Order, Part VII.E.2.a (emphasis added).

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][259] 256. The Assessor noted that [redacted][260] 257. Specifically, [redacted][261] 258. Rather, [redacted][262] 259. At the December 2021 Rule 30(b)(6) deposition regarding Privacy Review, Facebook's corporate designee described [redacted]	[redacted] As noted in the initial six-month Assessment, [redacted].[919] Next, [redacted][920] Then, [redacted][921] [redacted][923] The Assessor noted that [redacted][924] ● Paragraph 253 incorrectly cites to pages 78–79 of the 2021 Assessment Report for the proposition that [redacted]

[919] *See* Ex. 4 (2021 Assessment Report) at 69.

[920] *See id.*

[921] *See id.*

[922] *See id.*

[923] *See* Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 12 at 18.

[924] Ex. 4 (2021 Assessment Report) at 69.

Preliminary Findings of Fact (PFOF)	Response to PFOF
According to Facebook's witness, [redacted][263] 260. The Assessor noted that, [redacted][264] 261. The Assessor found that [redacted][265] 262. For example, in some cases, the Assessor [redacted][266]	Rather, the Assessor [redacted][925] ● Paragraphs 254–55 do not sufficiently describe the [redacted][926][927] ● Paragraphs 256–57 falsely state that Meta [redacted]

[925] Ex. 4 (2021 Assessment Report) at 68. Additionally, the Assessor refers [redacted] on page 80 of the initial Assessment, rather than on pages 78–79 cited in Paragraph 253. *See* Ex. 4 (2021 Assessment Report) at 80.

[926] *See* Ex. 4 (2021 Assessment Report) at 67; *see also* Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 requests 6–7) at 16.

[927] *See* Ex. 4 (2021 Assessment Report) at 67; *see also* Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 requests 6–7) at 16.

Preliminary Findings of Fact (PFOF)	Response to PFOF
*** [257] Ex. 4 at 78–79. [258] Ex. 4 at 78–79; Ex. 79 at 64:21–65:10. [259] Ex. 79 at 65:12–66:16. [260] Ex. 4 at 78. [261] Ex. 4 at 78–79. [262] Ex. 79 at 66:17–67:10. [263] Ex. 79 at 68:5–69:11. [264] Ex. 4 at 78–79. [265] Ex. 4 at 78–79. [266] Ex. 4 at 79.	[redacted] Rather, in the initial Assessment, the Assessor stated [redacted][928] Thus, [redacted] ● Paragraph 258 incorrectly limits [redacted] During the initial six-month Assessment, [redacted][929] ● Paragraphs 258–59 do not sufficiently capture the improvements to [redacted]

[928] Ex. 4 (2021 Assessment Report) at 78 (emphasis added).

[929] *See* Ex. 7 (Dec. 3, 2021 resp. to Oct. 1, 2021 request 2) at 27.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][930] [redacted][931] The Assessor acknowledged that [redacted][932] As a result of [redacted][933] As the Assessor noted, [redacted][934] [redacted][935]

[930] *See* Ex. 6 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 1) at 47; *see* Ex. D (2023 Assessment Report) at 10.

[931] Ex. 6 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 1) at 47.

[932] *See* Ex. D (2023 Assessment Report) at 10.

[933] *Id.*

[934] *Id.* at 94.

[935] *See id*.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][936] • Paragraphs 260–62 wrongly state that [redacted] As set forth in Meta's response to Paragraph 258, *supra*, which Meta expressly incorporates herein, [redacted] For this reason, Meta expressly disagreed with the Assessor's findings that [redacted]

[936] *Id*.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][937] Further, Paragraphs 261–62 fail to note that the Assessor's observations were directed at [redacted] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] described herein.[938]
Paragraphs 263–66 263. The 2020 Order identifies several key risk areas that included: collection or use of security phone numbers; changes to facial recognition practices; sharing nonpublic user information beyond privacy settings; third-party password requests; affiliate data-sharing; and password encryption.[267] 264. Facebook's guidelines [redacted][268] 265. [redacted]	**Paragraphs 263–66** purport to describe certain Assessor observations about [redacted] as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII.E.2 of the Order required Meta to address specific "risk areas" within the Privacy Review process, particularly those set forth in Paragraph 263. Instead, the six *project types* noted in Paragraph 263 (security phone numbers; facial recognition practices; sharing nonpublic user information; third-party password requests; affiliate data-sharing; and

[937] *See* Ex. 7 (Dec. 3, 2021 resp. to Oct. 1, 2021 request 2) at 27.

[938] *See* Ex. 4 (2021 Assessment Report) at 78–79.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][269] 266. [redacted][270] ***	password encryption) are at most a collection of the project types explicitly referenced throughout the Order. While the Order contains certain other obligations outside of Part VII, these provisions are separate from Order requirements for the Privacy Review process.[939] Additionally, contrary to the characterizations in Paragraphs 263–64, the Order does not [redacted][940] ● Paragraph 266 fails to note that the Assessor's observations were directed at a perceived weakness in the documentation relating to [redacted] rather than the effectiveness of [redacted][941] ● Paragraphs 264–66 omit context about steps taken by Meta for [redacted][942] Additionally, [redacted]

[267] Ex. 3, Parts II, IV, V, VI, VII.E.4, VII.E.5.
[268] Ex. 4 at 77; Ex. 5 at 16 (Oct. 29, 2021 resp. to Aug. 27, 2021 requests 6–7).
[269] Ex. 4 at 77; Ex. 5 at 16 (Oct. 29, 2021 resp. to Aug. 27, 2021 requests 6–7)[.]
[270] Ex. 4 at 77.

[939] *See* Order, Parts II, IV, V, VI, VII.E.4, VII.E.5.

[940] *Id.*

[941] *See* Ex. 4 (2021 Assessment Report) at 77.

[942] *See* Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 requests 6–7) at 16.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][943] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] described herein.[944]
Paragraphs 267–76 267. For example, [redacted][271] 268. The Order requires that, specifically with respect to Facebook's sharing of Covered Information with any other Facebook-owned affiliate, Facebook must design, implement, maintain, and document safeguards that control for risks to the privacy, confidentiality, and integrity of such Covered Information, based on the volume and sensitivity of Covered Information that is at risk and the likelihood the risk could be realized and result in the unauthorized access, collection, use, destruction, or disclosure of the Covered Information.[272] 269. [redacted][273] 270. [redacted]	**Paragraphs 267–76** purport to describe certain Assessor observations about [redacted] during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to [redacted] ○ First, [redacted] ○ Second, [redacted]

[943] *See id.*

[944] *See* Ex. 4 (2021 Assessment Report) at 77.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][274] 271. At the time of the assessment, [redacted][275] 272. [redacted][276] 273. In addition, the Assessor found [redacted][277] 274. Moreover, Facebook [redacted][278] 275. [redacted]	[redacted][945] [redacted][946] As a result, [redacted][947] However, [redacted][948] ● Paragraphs 267–76 wrongly imply that Meta's obligations under Part VII of

[945] *See* Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 8) at 15; *see also* Order, Part VII; Ex. D (2023 Assessment Report) at 67.

[946] *See* Order, Part VII.E.4; *see also* Ex. 4 (2021 Assessment Report) at 84 (recognizing that [redacted].

[947] Order, Definition Q.

[948] Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 8) at 15.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][279] 276. Facebook agreed that, [redacted][80] ***	the Order required it to [redacted] With respect to material risk, nothing in the Order requires [redacted] While Part VII.E.2.b of the Order only requires that "a *material change* in the sharing of Covered Information with a Facebook-owned affiliate" be deemed material risk,[949] Meta affirmatively chose to implement internal policies beyond those specifically required by the Order [redacted][950] ● Paragraphs 271–72 do not acknowledge that Meta provided the Assessor with [redacted][951] Paragraphs 271–72 also falsely imply that Meta was not [redacted] The cited references only note that [redacted][952]

[271] Ex. 6 at 15–16 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 8); Ex. 79 at 69:17–25.
[272] Ex. 3, Part VII.E.3.
[273] Ex. 4 at 77; Ex. 6. at 15–16 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 8).
[274] Ex. 79 at 70:1–14.
[275] Ex. 4 at 77; Ex. 6. at 15–16 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 8).
[276] Ex. 4 at 77; Ex. 6. at 15–16 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 8).
[277] Ex. 4 at 84.
[278] Ex. 4 at 84.
[279] Ex. 4 at 84.
[280] Ex. 7 at 22–25 (Dec. 3, 2021 resp. to Aug. 27, 2021 request 16).

[949] Order, Part VII.E.2.b (emphasis added).

[950] *See* Ex. 4 (2021 Assessment Report) at 77; *see also* Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 8) at 15.

[951] *See* Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 8) at 15; *see also* Ex. 4 (2021 Assessment Report) at 7.

[952] *See* Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 8) at 15.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][953] • Paragraphs 273–74 do not acknowledge several processes Meta has in place to control for [redacted][954][955][956][957]

[953] *See id*.

[954] *See id.*

[955] *See id.* at 15–16; Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 request 16) at 22.

[956] *Id*.

[957] Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 8) at 15–16; *see also* Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 request 16) at 22.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	● Paragraph 275 omits relevant context regarding the Assessor's statement in the initial Assessment Report. The Assessor noted the [redacted][958] Meta has continued to improve and refine its approach to [redacted] ○ [redacted] ○ [redacted] ○ [redacted]

[958] *See* Ex. 4 (2021 Assessment Report) at 84.

[959] *See* Ex. D (2023 Assessment Report) at 65.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][960][redacted][961][redacted][962]. • Paragraph 276 does not reference any of the robust controls Meta had in place during the initial Assessment to [redacted][963] For example, [redacted][964]

[960] *Id.*

[961] *Id.* at 65–66.

[962] *See id.* at 69.

[963] *See* Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 request 16) at 22.

[964] *See id*.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][965] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted][966] Indeed, in its most recent report, the Assessor acknowledged that Meta [redacted][967]
Paragraphs 277–80 277. [redacted][281] 278. The Assessor observed that [redacted]	**Paragraphs 277–80** purport to set forth the details of [redacted] during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Paragraphs 278–80 omit relevant context regarding [redacted]

[965] *Id.*

[966] *See* Ex. 4 (2021 Assessment Report) at 77, 84.

[967] Ex. D (2023 Assessment Report) at 69.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][282] 279. In some cases, the Assessor [redacted][283] 280. Facebook conceded [redacted][284] [281] Ex. 6 at 31–32 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 10). [282] Ex. 4 at 80. [283] Ex. 4 at 80. [284] Ex. 6 at 31–32 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 10).	[redacted][968] Meta has implemented processes [redacted][969] [redacted][970] [redacted][971] ● Paragraph 277 does not acknowledge that [redacted]"[972] ● Paragraphs 277–80 omit relevant context regarding significant

[968] *See* Ex. 6 (Nov. 19, 2021 resp, to Aug. 27, 2021 request 10) at 31.

[969] *Id.*

[970] *See id.*

[971] *Id.*

[972] Ex. 4 (2021 Assessment Report) at 80.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	remediation efforts Meta has taken since the initial Assessment period [redacted] The presentation omits the Assessor's most recent findings in its 2023 Assessment Report that [redacted][973] Additionally, the Assessor acknowledged that Meta implemented [redacted][974] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted][975]
Paragraphs 281–89 281. The Order requires Facebook to: (i) assess the privacy risks associated with the	**Paragraphs 281–89** purport to describe certain Assessor observations regarding [redacted]

[973] Ex. D (2023 Assessment Report) at 94.

[974] *Id.*

[975] *See* Ex. 4 (2021 Assessment Report) at 80.

Preliminary Findings of Fact (PFOF)	Response to PFOF
new or modified product, service, or practice; and (ii) document each product, service, or practice as implemented, along with any safeguards implemented to control for the identified risks and the resulting Privacy Review decision (e.g., including documentation of whether the project was approved contingent upon the implementation of safeguards or other recommendations).[285] 282. The Assessor found [redacted][286] 283. Moreover, Facebook [redacted] Therefore, the Assessor [redacted][287]	[redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Paragraph 281 incorrectly characterizes the Order as requiring Meta to evaluate "privacy risks" for new or modified products, services, or practices. Rather, the Order requires Meta to "assess[] the risks to the *privacy, confidentiality, and Integrity of the Covered Information*" for each new or modified product, service, or practice.[976] ● Paragraph 282 suggests that [redacted][977] [redacted][978] As the Assessor recently acknowledged, Meta has since [redacted][979] ● Paragraph 283 does not provide details on the [redacted]

[976] Order, Part VII.E.2 (emphasis added).

[977] *See* Ex. 4 (2021 Assessment Report) at 79.

[978] *Id.*

[979] Ex. D (2023 Assessment Report) at 81.

Preliminary Findings of Fact (PFOF)	Response to PFOF
284. Specifically, the Assessor found that [redacted][288] 285. The Assessor also found [redacted][289] 286. [redacted][290] 287. [redacted]	[redacted][980] ● Paragraph 284 wrongly states [redacted] In fact, the Assessor observed that [redacted][981] The presentation's language in Paragraph 284 incorrectly [redacted]

[980] Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 2) at 10.

[981] Ex. 4 (2021 Assessment Report) at 79 (emphasis added).

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][291] 288. [redacted][292] 289. [redacted][293] ***	[redacted][982] ● Paragraphs 284–85 wrongly suggest that [redacted] The Commission's preliminary factual findings are incomplete and therefore inaccurate insofar as Paragraphs 284–85 omit that [redacted][983] With respect to the examples referenced in Paragraphs 284–85, [redacted][984] Moreover, [redacted][985] ● Paragraphs 286–87 incorrectly state that [redacted]

[285] Ex. 3, Part VII.E.2.a.
[286] Ex. 4 at 80.
[287] Ex. 4 at 80.
[288] Ex. 4 at 79.
[289] Ex. 4 at 79.
[290] Ex. 4 at 80.
[291] Ex. 5 at 19 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 12); Ex. 6 at 17 (Nov. 19, 2021 resp. to Aug. 27, 2021 requests 13, 18, 21); Ex. 79 at 71:1–11.
[292] Ex. 79 at 70:22–25
[293] Ex. 79 at 71:12–72:25.

[982] Ex. 7 (Dec. 3, 2021 resp. to Oct. 1, 2021 request 3) at 20.

[983] *See* Ex. 4 (2021 Assessment Report) at 79.

[984] Ex. 7 (Dec. 3, 2021 resp. to Oct. 1, 2021 request 3) at 20.

[985] *Id.* (emphasis added).

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted] Instead, the Assessor found [redacted][986] [redacted][987] ● Paragraphs 288–89 falsely imply that Meta's obligations under Part VII of the Order required it [redacted] Further, the Commission's preliminary factual findings are misleading and therefore inaccurate to the extent that Paragraphs 288–89 imply that [redacted]

[986] Ex. 4 (2021 Assessment Report) at 80 (emphasis added).

[987] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][988] As noted in Paragraph 289, Meta has since developed [redacted][989] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted][990]
Paragraphs 290–305 290. [redacted][294] 291. [redacted][295] 292. [redacted]	**Paragraphs 290–305** purport to set forth details on [redacted] during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to [redacted] The Order requires Meta to identify risks associated with Meta's "collection, use, or sharing of Covered Information in any new or modified product, service, or practice," and document the safeguards (i.e., mitigations) "being implemented to control for the identified risks."[991] Meta is *not* required to [redacted]

[988] *See* Ex. 7 (Dec. 3, 2021 resp. to Oct. 1, 2021 request 2) at 28.

[989] *Id.*

[990] *See* Ex. 4 (2021 Assessment Report) at 79–80.

[991] Order, Part VII.E.2.a.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][296] 293. Evidence Manager is the tooling through which Facebook [redacted][297] 294. [redacted][298]. 295. For instance, [redacted][299]	[redacted] In developing and implementing [redacted] Meta affirmatively chose to implement processes exceeding the Order requirements. ● Paragraphs 290–93 omit relevant context on [redacted][992] [redacted][993] [redacted][994] [redacted][995] ● Paragraphs 294–97 omit relevant context regarding Meta's development and further enhancement of [redacted] As acknowledged by the

[992] [redacted] *See, e.g.*, Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 20) at 9.

[993] Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 20) at 9.

[994] *See id*.

[995] *See id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
296. [redacted][300]	Assessor, Meta implemented during the initial Assessment period a [redacted][996] The Assessor noted enhancements in the time since, stating that [redacted][997]
297. [redacted][301]	
298. [redacted][302]	• Paragraphs 298–300 inaccurately suggest that Meta should have [redacted] As the Assessor acknowledged, [redacted].[998] As set forth in Meta's response to Paragraphs 294–97, *supra*, which Meta expressly incorporates herein, the Commission's preliminary factual findings also omit [redacted]
299. [redacted][303]	
300. [redacted]	

[996] *See* Ex. 4 (2021 Assessment Report) at 79.

[997] *See* Ex. D (2023 Assessment Report) at 79.

[998] Ex. 4 (2021 Assessment Report) at 87.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][304] 301. [redacted][305] 302. [redacted][306] 303. The Assessor observed [redacted][307] 304. For some mitigation implementations, Facebook uses systematic verifiers to the verify accuracy of an implementation.	[redacted] Finally, the Commission's preliminary factual findings are also inaccurate for the reasons set forth in Meta's response to Paragraph 959(a), *infra*, which Meta expressly incorporates herein. ● Paragraph 301 misstates that [redacted][999] The Assessor did not make this conclusion in the initial Assessment Report, [redacted][1000] The Assessor noted that [redacted][1001] Further, the Commission's preliminary factual findings are misleading to the extent that Paragraph 301 implies or purports that Meta's obligations under Part VII of the Order required it to [redacted] ● Paragraphs 302–05 omit relevant context about Meta's transformation of [redacted]

[999] *Id.* at 86.

[1000] *Id.*

[1001] *Id.* at 67.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted] Not all mitigation implementations can be validated using systematic verifiers. As of October 2020, [redacted][308] 305. As of November 2021, Facebook reported [redacted][309] *** [294] Ex. 5 at 18, 20 (Oct. 29, 2021 resp. to Aug. 27, 2021 requests 12, 19); Ex. 6 at 16–17 (Nov. 19, 2021 resp. to Aug. 27, 2021 requests 13, 18, 21). [295] Ex. 79 at 80:17–81:11. [296] Ex. 79 at 88:7–13. [297] Ex. 79 at 81:12–23. [298] Ex. 4 at 81. [299] Ex. 4 at 81; Ex. 79 at 89:9–91:22. [300] Ex. 4 at 81. [301] Ex. 8 at 8 (Oct. 1, 2021 resp. to Aug. 27, 2021 request 12); Ex. 6 at 16–17 (Nov. 19, 2021 resp. to Aug. 27, 2021 requests 13, 18, 21 ; Ex. 79 at 91:23–92:24. [302] Ex. 79 at 82:4–83:14. [303] Ex. 79 at 83:15–25. [304] Ex. 4 at 86.	Since the initial six-month Assessment, Meta has been [redacted][1002] ○ Meta has improved [redacted][1003] Meta has continued to expand the [redacted][1004][1005] ○ [redacted]. [1006] As the Assessor acknowledged in its latest Report, Meta [redacted]

[1002] Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 12) at 19.

[1003] Ex. 4 (2021 Assessment Report) at 87.

[1004] *See* Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 21) at 18.

[1005] *See* Ex. D (2023 Assessment Report) at 160.

[1006] *See* Ex. 7 (Dec. 3, 2021 resp. to Oct. 1, 2021 request 2) at 28; *see also* Ex. D (2023 Assessment Report) at 95.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[305] Ex. 4 at 86. [306] Ex. 4 at 86. [307] Ex. 4 at 81. [308] Ex. 79 at 98:1–100:21. [309] Ex. 5 at 18, 21 (Oct. 29, 2021 resp. to Aug. 27, 2021 requests 12, 19).	[redacted][1007][redacted][1008][redacted][1009] ○ As a result of Meta's developments to [redacted] the Assessor concluded that Meta's improvements [redacted] the Assessor's findings in the initial Assessment relating to [redacted][1010] Indeed, the Assessor found that [redacted]

[1007] Ex. D (2023 Assessment Report) at 78.

[1008] *Id.*

[1009] *Id.* at 79.

[1010] *Id.* at 95.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1011] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted][1012]
Paragraphs 306–13 306. [redacted][310] 307. [redacted][311] 308. [redacted][312] 309. [redacted]	**Paragraphs 306–13** purport to set forth the details of the level of scrutiny afforded to [redacted] during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required [redacted] ● Paragraphs 306–13 falsely imply that Meta's obligations under Part VII of the Order required Meta to [redacted] or

[1011] *Id.*

[1012] *See* Ex. 4 (2021 Assessment Report) at 80.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][313] 310. In fact, the Assessor noted that [redacted][314] 311. [redacted][315] 312. [redacted][316] 313. [redacted][317]	that Part VII of the Order required Meta to [redacted] ● Paragraph 310 falsely characterizes [redacted][1013] [redacted][1014] Further, [redacted][1015] Meta also requires [redacted][1016] ● Paragraphs 310–12 omit context regarding [redacted] A more complete and accurate overview of [redacted] is

[1013] *See* Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 12) at 19.

[1014] *See* Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 17) at 20.

[1015] *Id.*

[1016] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[310] Ex. 4 at 87–88; Ex. 79 at 86:12–16. [311] Ex. 4 at 87–88. [312] Ex. 79 at 86:4–11. [313] Ex. 79 at 85:9–22. [314] Ex. 4 at 87–88. [315] Ex. 79 at 86:12–87:15. [316] Ex. 79 at 87:11–88:6. [317] Ex. 4 at 87–88.	provided in response to Paragraphs 302–05, *supra,* which Meta expressly incorporates herein. Further, [redacted][1017] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted].[1018]
Paragraphs 314–17 314. The Assessor found that [redacted][318] 315. Facebook reported that [redacted]	**Paragraphs 314–17** purport to set forth details regarding [redacted] during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to [redacted] ● Paragraphs 314–15 omit [redacted]

[1017] Ex. D (2023 Assessment Report) at 78.

[1018] *See* Ex. 4 (2021 Assessment Report) at 80.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][319] 316. Moreover, [redacted][320] 317. For example, the Assessor observed [redacted][321] ***	[redacted][1019] [redacted][1020] Specifically, [redacted][1021] Additionally, [redacted][1022] ● Paragraph 316 omits relevant context regarding [redacted]

[318] Ex. 4 at 81.
[319] Ex. 5 at 17 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 11); Ex. 79 at 73:25–76:4.
[320] Ex. 4 at 81.
[321] Ex. 4 at 81.

[1019] *See* Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 11) at 17.

[1020] *See id.*

[1021] *See id.*

[1022] *See id.* at 17–18.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1023] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] during the initial Assessment period.[1024]
Paragraphs 318–27 318. The Assessor was unable to [redacted][322] 319. [redacted] the Assessor found [redacted][323] 320. Additionally, the Assessor observed [redacted][324]	**Paragraphs 318–27** purport to set forth the details about [redacted] as they existed within the Privacy Review domain during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to [redacted] Part VII.E.2 of the Order requires Meta to "document[] any safeguards *being* implemented to control for the identified risks,"[1025] but does not require Meta to [redacted] as suggested in Paragraph 320. In adopting a policy that requires [redacted], Meta affirmatively chose to implement procedures beyond those

[1023] *See id.* at 18.

[1024] *See* Ex. 4 (2021 Assessment Report) at 81.

[1025] Order, Part VII.E.2 (emphasis added).

Preliminary Findings of Fact (PFOF)	Response to PFOF
321. Facebook conceded [redacted] It further admitted that, [redacted][325] 322. On October 29, 2021, Facebook reported [redacted][326] 323. Facebook also reported [redacted][327] 324. During the assessment, [redacted][328] 325. Facebook provided the Assessor [redacted][329]	specifically required by the Order. Meta further exceeds the Order requirements through [redacted][1026] ● Paragraph 318 does not accurately and completely describe Meta's processes, which are [redacted], as discussed *supra* Section IV.C, Resp. to PFOF ¶¶ 252–317. ● Paragraphs 319–21 falsely imply that Meta's obligations under Part VII of the Order required [redacted] The Order does not impose *any* requirements relating to [redacted] Rather, the Order requires Meta to implement safeguards "prior to implementing each new or modified product, service, or practice" specifically with respect to Meta's "collection, use, or sharing of Covered Information."[1027] Such safeguards "shall include . . . (i) conducting a privacy review that assesses the risks to the privacy, confidentiality, and Integrity of the Covered Information, the safeguards in place to control such risks, and the sufficiency of the User notice and, if necessary, consent; and (ii) documenting a description of each

[1026] *See* Ex. 4 (2021 Assessment Report) at 70; Ex. D (2023 Assessment Report) at 78, 95.

[1027] Order, Part VII.E.2.

Preliminary Findings of Fact (PFOF)	Response to PFOF
326. [redacted][330] 327. The Assessor observed that, [redacted][331] [322] Ex. 4 at 73, 78. [323] Ex. 4 at 85–86, 88. [324] Ex. 4 at 86–87. [325] Ex. 5 at 20–21 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 19). [326] Ex. 5 at 20–21 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 19). [327] Ex. 5 at 20–21 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 19). [328] Ex. 4 at 86. [329] Ex. 4 at 86. [330] Ex. 4 at 86. [331] Ex. 4 at 88.	reviewed product, service, or practice that was ultimately implemented; any safeguards being implemented to control for the identified risks; and the decision or recommendation made as a result of the review[.]"[1028] Moreover, Paragraphs 319–21 omit context regarding the Assessor's [redacted][1029] The Assessor further explained in its recent report [redacted][1030] [redacted][1031] [redacted][1032] [redacted][1033] ● Paragraph 321 does not provide an accurate description of Meta's Part XV response regarding Meta's controls to [redacted]

[1028] *Id.*

[1029] Ex. 4 (2021 Assessment Report) at 88.

[1030] *See* Ex. D (2023 Assessment Report) at 81.

[1031] *Id.*

[1032] *Id*

[1033] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	Specifically, Paragraph 321 states that Meta [redacted] but as stated in its Part XV response, Meta only acknowledged [redacted][1034] Meta did not concede that this type of control is necessary for compliance with the Order. Indeed, this type of control is not required under the Order as discussed *supra* Section IV.C, Resp. to PFOF ¶¶ 319–20. In addition, Paragraph 321 states that Meta [redacted] but as stated in Meta's Part XV response, only a [redacted][1035] [redacted][1036] ● Paragraph 322 omits context about the Assessor's findings regarding [redacted] As set forth above, *supra* Section IV.C ¶¶ 214–51, which Meta expressly incorporates herein, the Assessor observed in its 2023 Report

[1034] Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 19) at 29 (emphases added).

[1035] *Id*.

[1036] Ex. 4 (2021 Assessment Report) at 86.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	that [redacted][1037] • Paragraph 323 omits relevant context about the Assessor's findings regarding Meta's enhancements to the [redacted][1039] Additionally, Meta [redacted]

[1037] Ex. D (2023 Assessment Report) at 95, 98.

[1038] *See, e.g.*, Ex. D (2023 Assessment Report) at 78, 95; Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 requests 12, 17, 19) at 18–21.

[1039] Ex. D (2023 Assessment Report) at 78.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1040] Finally, Meta also [redacted][1041] ● Paragraph 324 does not provide a complete description from the initial Assessment Report of [redacted] Specifically, Paragraph 324 states that [redacted] but as stated in the initial Assessment Report, [redacted][1042] ● Paragraph 325 falsely implies that Meta did not meet requirements imposed by the Order. Specifically, Paragraph 325 states that the [redacted] but fails to clarify that such [redacted] was based on Meta's self-imposed [redacted] rather than any particular

[1040] Ex. D (2023 Assessment Report) at 95; Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 requests 7, 20) at 2.

[1041] Ex. D (2023 Assessment Report) at 95.

[1042] Ex. 4 (2021 Assessment Report) at 86 (emphasis added).

Preliminary Findings of Fact (PFOF)	Response to PFOF
	standard required by the Order.[1043] While Part VII.E.2 of the Order requires Meta's Privacy Review safeguards to include identifying the relevant risks and mitigations and documenting these findings, it does not impose any [redacted] with respect to those risks or mitigations. ● Paragraph 326 falsely states the Assessor found [redacted] Rather, the Assessor [redacted][1044] The Assessor subsequently concluded that the improvements Meta implemented during the first biennial Assessment [redacted][1045] Indeed, the Assessor [redacted]

[1043] *See id.*

[1044] *See id.*

[1045] Ex. D (2023 Assessment Report) at 95.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1046] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm or impact on users as a result of [redacted][1047]
Paragraphs 328–33 328. [redacted][332] 329. Specifically, the Privacy Review control domain in Facebook's privacy program consists of [redacted] safeguards, [redacted] of which were implemented and executed during the assessment period.[333] 330. [redacted][334] 331. [redacted]	**Paragraphs 328–33** purport to set forth the details about Meta's Privacy Review safeguards as they existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to implement [redacted] Privacy Review safeguards described herein. Specifically, Part VII.E.2 of the Order does not require Meta to implement [redacted]

[1046] *Id.*

[1047] *See* Ex. 4 (2021 Assessment Report) at 64–89.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted].[335] 332. For instance, Facebook stated that [redacted].[336] 333. In its response to the FTC's demand letters in late October and November 2021, Facebook stated [redacted]	By implementing these described safeguards,[1048] Meta affirmatively chose to implement safeguards beyond those specifically required by the Order. In addition, the Privacy Review safeguards [redacted].[1049] and as such, the [redacted] safeguards described herein supplement the multiple measures Meta had implemented to help ensure [redacted] *see, e.g.*, *supra* Section IV.C, Resp. to PFOF ¶¶ 191–99, many of which themselves are not required by the Order. ● Paragraph 328 wrongly implies that the Assessor characterized these safeguards as "[redacted] ● Paragraph 328 omits relevant context from the Assessor's finding in the initial Assessment report that [redacted].[1050] ● Paragraph 329 omits that Meta implemented [redacted]

[1048] *See* Ex. D (2023 Assessment Report) at 77–78.

[1049] *See* Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 9) at 29.

[1050] Ex. 4 (2021 Assessment Report) at 73.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][337] [332] Ex. 4 at 88. [333] Ex. 4 at 65; Ex. 6 at 29–30 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 9). [334] Ex. 6 at 29–30 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 9). [335] Ex. 6 at 29–30 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 9). [336] Ex. 6 at 29–30 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 9). [337] Ex. 5 at 22–23 (Oct. 29, 2021 resp. to Aug. 27, 2021, request 22); Ex. 6 at 9–11, 15 (Nov. 19, 2021 resp. to Aug. 27, 2021 requests 2, 15).	[redacted][1051] • Paragraphs 331–33 omit that Meta has since implemented [redacted][1052] [redacted][1053] Meta also [redacted][1054] [redacted]

[1051] *Id.* at 65, n.48.

[1052] Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 9) at 29–30.

[1053] *Id.* at 30.

[1054] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1055] as discussed further in Meta's response to Paragraphs 302–05, [redacted][1056] [redacted][1057] • They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1058]
Paragraphs 334–41 334. [redacted][338] 335. Facebook's [redacted]	**Paragraphs 334–41** purport to describe [redacted] These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because:

[1055] Ex. D (2023 Assessment Report) at 8.

[1056] *Id.* at 78

[1057] *See id.* at 82–83.

[1058] *See* Ex. 4 (2021 Assessment Report) at 64–89.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][339] 336. The [redacted][340] 337. [redacted] 338. Facebook stated [redacted][341] 339. Specifically, [redacted]	• Nothing in Part VII of the Order required Meta to require personnel to implement or verify the implementation of all associated mitigations before releasing a project. Specifically, Part VII.E.2 of the Order requires Meta's Privacy Review safeguards to include identifying the relevant risks and mitigations and documenting these findings, but does not require Meta to [redacted].[1059] In conducting [redacted] Meta affirmatively chose to implement processes beyond those specifically required by the Order. • Paragraphs 338–41 omits the [redacted] as discussed *supra* in response to Paragraphs 243–47. • Paragraph 337 contains factual assertions without citations to the record. • They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users as a result of [redacted]

[1059] Order, Part VII.E.2.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][342] 340. [redacted][343] 341. [redacted][344] *** [338] Ex. 6 at 18–19 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 21). [339] Ex. 6 at 18–19 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 21). [340] Ex. 6 at 18–19 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 21). [341] Ex. 6 at 17–18 (Nov. 19, 2021 resp. to Aug. 27, 2021 requests 13, 18). [342] Ex. 6 at 17–18 (Nov. 19, 2021 resp. to Aug. 27, 2021 requests 13, 18). [343] Ex. 6 at 17–18 (Nov. 19, 2021 resp. to Aug. 27, 2021 requests 13, 18). [344] Ex. 6 at 17–18 (Nov. 19, 2021 resp. to Aug. 27, 2021 requests 13, 18).	[redacted][1060]
Paragraphs 342–48 342. Facebook [redacted]	**Paragraphs 342–48** purport to describe [redacted]

[1060] *See* Ex. 4 (2021 Assessment Report) at 64–89.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][345] 343. Through this review, [redacted][346] 344. In or about the summer or fall of 2021, Facebook began using [redacted] to conduct retroactive, "after-the-fact" checks as part of its effort to ensure that all code changes that should have completed Privacy Review went through that process. These "lookback" efforts reached back in time to September 2020 but did not pull in all code changes that had occurred at Facebook.[347] 345. [redacted][348] 346. [redacted]	These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● As stated in Meta's response above, *supra* Section IV.C, Resp. to PFOF ¶¶ 334–41, nothing in Part VII.E.2 of the Order required Meta to [redacted][1061] In [redacted] described in Paragraphs 342–48 [redacted], Meta affirmatively chose to implement processes beyond those specifically required by the Order. ● Paragraphs 342–48 [redacted][1062] and that [redacted][1063] ● Paragraphs 343–48 fail to clarify [redacted]

[1061] *See* Order, Part VII.E.2.

[1062] Ex. D (2023 Assessment Report) at 85.

[1063] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][349] 347. Through these efforts, [redacted][350] 348. [redacted][351] *** [345] Ex. 6 at 9–12 (Nov. 19, 2021 resp. to Aug. 27, 2021 requests 2, 3). [346] Ex. 6 at 9–12 (Nov. 19, 2021 resp. to Aug. 27, 2021 requests 2, 3). [347] Ex. 79 at 37:25–39:20. [348] Ex. 79 at 47:20–48:21. [349] Ex. 6 at 9–11 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 2). [350] Ex. 6 at 9–12 (Nov. 19, 2021 resp. to Aug. 27, 2021 requests 2–3); Ex. 9 (FBCO-ASSESS-XV-00001716). [351] Ex. 5 at 15 (Oct. 29, 2021 resp. to Aug. 27, 2021	[redacted] As stated above in Meta's response, *supra* Section IV.C, Resp. to PFOF ¶¶ 318–27, Meta is not required [redacted] ● Paragraph 344 falsely implies that [redacted][1064] In addition, [redacted][1065] ● Paragraph 345 excludes [redacted][1066] Paragraph 345 also omits context regarding [redacted]

[1064] *See id.* at 83; Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 1) at 14.

[1065] *See* Ex. D (2023 Assessment Report) at 82.

[1066] Ex. 79 (M. Protti Dep.) at 48:13–17.

Preliminary Findings of Fact (PFOF)	Response to PFOF
request 1); Ex. 6 at 9–11 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 2); Ex. 79 at 38:25–39:14, 39:21–42:10. [redacted]	[redacted][1067] • Paragraph 347 omits the Assessor's relevant explanation in the 2021 Assessment Report that [redacted][1068] As explained in the 2021 Assessment Report, [redacted][1069] [redacted][1070] • Paragraph 348 misstates the findings [redacted] Specifically, Paragraph 348 [redacted]

[1067] Ex. D (2023 Assessment Report) at 83.

[1068] Ex. 4 (2021 Assessment Report) at 75 (emphasis added).

[1069] Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 4) at 12.

[1070] *Id.* at 13.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1071] Paragraph 348 also omits that [redacted][1072] [redacted][1073] Further, Paragraph 348 misleadingly suggests that [redacted] As the Assessor recognized and as noted *supra* Section IV.C, Resp. to PFOF ¶¶ 200–06, [redacted][1074] ● They omit relevant context from the Assessor's recent findings in the 2023 Assessment Report regarding Meta's remediation of coverage gaps, [redacted]

[1071] Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 1) at 15 (emphasis added).

[1072] *Id.*

[1073] *Id.*

[1074] Ex. D (2023 Assessment Report) at 85.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1075] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with [redacted] described herein.[1076]
Paragraphs 349–57	**Paragraphs 349–57** purport to set forth the details of the Assessor's findings regarding

[1075] *Id.* 82–84, 93.

[1076] *See* Ex. 4 (2021 Assessment Report) at 64–89.

Preliminary Findings of Fact (PFOF)	Response to PFOF
349. [redacted][352]	[redacted], as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to [redacted] ● Paragraphs 349–57 omit that Meta's processes exceed the requirements under the Order, which, among other things, does not require [redacted] ● Paragraph 350 does not provide a correct description of the Assessor's findings regarding [redacted]. Specifically, Paragraph 350 states the Assessor concluded that the [redacted] This is inaccurate. The Assessor stated in the initial Assessment Report that the [redacted]
350. However, the Assessor found [redacted] The Assessor concluded [redacted][353]	
351. For example, [redacted][354]	
352. The Assessor found, [redacted] The Assessor concluded [redacted][355]	
353. In another example, Facebook required both a Privacy Review and an API XFN review (a separate review conducted in Launch Manager before Facebook updates an internal or external API) whenever it modified the way a third-party API shared	

Preliminary Findings of Fact (PFOF)	Response to PFOF
Covered Information.[356] 354. However, there was no direct link between these processes; Facebook acknowledged they were administered by separate groups.[357] 355. For instance, [redacted][358] 356. [redacted][359] 357. [redacted][360]	[redacted][1077] ● Paragraph 354 omits that [redacted][1078] ● Paragraph 357 omits details regarding Meta's efforts to [redacted][1079] For instance, [redacted]

[1077] *Id.* at 89 (emphasis added).

[1078] Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 request 25) at 26.

[1079] *See id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
*** [352] Ex. 4 at 88–89. [353] Ex. 4 at 88–89. [354] Ex. 4 at 88–89. [355] Ex. 4 at 88–89. [356] Ex. 7 at 25–26 (Dec. 3, 2021 resp. to Aug. 27, 2021 request 25). [357] Ex. 7 at 25–26 (Dec. 3, 2021 resp. to Aug. 27, 2021 request 25). [358] Ex. 4 at 89. [359] Ex. 7 at 25–26 (Dec. 3, 2021 resp. to Aug. 27, 2021 request 25). [360] Ex. 7 at 25–26 (Dec. 3, 2021 resp. to Aug. 27, 2021 request 25).	[redacted][1080] Meta has [redacted][1081] ● Paragraphs 349–57 fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding the [redacted] described herein.[1082]
Paragraphs 358–64 358. In late December 2020, Facebook executive [redacted] wrote in an email to Chief Executive Officer Mark Zuckerberg: "The privacy work is putting a significant shear force on our Tech teams and culture, and I don't think I've seen anything like it. . . . [redacted]" [redacted] further wrote: [redacted]	**Paragraphs 358–64** purport to set forth internal Facebook communications related to the implementation of the Privacy Review process in the initial months after the Privacy Program was launched on October 25, 2020. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Paragraph 358 incorrectly suggests [redacted] email is reflective of issues with the Privacy Review process or Meta's adherence to the Order. Nothing in [redacted] email suggests that [redacted] On the contrary, [redacted] email notes that [redacted]

[1080] *Id.*

[1081] *Id.*

[1082] *See* Ex. 4 (2021 Assessment Report) at 88–89.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][361] 359. In June 2021, [redacted], a Privacy Program Manager (PPM) responsible for leading Privacy Reviews, emailed Chief Executive Officer Mark Zuckerberg and Chief Operating Officer Sheryl Sandberg to raise concerns. Specifically, [redacted] wrote that some project owners had "made a pattern out of pushing Privacy to rush, re-prioritize, and in my opinion to circumvent/cut corners in the process." [redacted] also described being pressured or intimidated by product teams into approving or prioritizing certain products, or otherwise changing how the Privacy Review was conducted, such as with respect to timelines, scope, and review methods.[362] 360. Michel Protti is Facebook's Chief Privacy Officer and designated compliance officer under the Order.[363] 361. Protti's job duties and responsibilities include overseeing Facebook's efforts to improve privacy and comply with all privacy regulations, including the Order.[364] 362. In a discussion about [redacted] email to Sandberg and Zuckerberg, Protti wrote that what [redacted] described is	[redacted] ● Paragraph 359 omits portions of [redacted] email that emphasizes that, despite any described pressure [redacted] has allegedly received from project owners, [redacted] has "stay[ed] the course of compliant and meaningful PXFN" member,[1083] Paragraph 359 also omits other produced emails in which [redacted] reiterated [redacted] statement that [redacted] had and would continue to carry out his duties consistent with Meta's privacy obligations.[1084] Paragraph 359 further omits portions of [redacted] email where [redacted] states that the conduct [redacted] was concerned about stemmed primarily from a single individual's team.[1085] ● Paragraph 360 misstates Michel Protti's title. Consistent with Part VII.C of the Order, Michel Protti is Meta's Chief Privacy Officer for Product, in addition to Designated Compliance Officer. ● They omit [redacted]

[1083] Ex. 46 (June 21, 2021 email fr. [redacted] to S. Sandberg, M. Zuckerberg, FBCO-ASSESS-XV-00014986) at 4.

[1084] *See, e.g.*, Ex. 73 (Apr. 29, 2022 resp. to Mar. 17, 2022 request 3) at 4 n.8 (citing FBCO-ASSESS-XV-00024402).

[1085] *See, e.g.*, Ex. 46 (June 21, 2021 email fr. [redacted] to S. Sandberg, M. Zuckerberg, FBCO-ASSESS-XV-00014986 at 3–4.

Preliminary Findings of Fact (PFOF)	Response to PFOF
"basically what every [Privacy Project Manager] goes through," although [redacted] experience was "maybe slightly more acute."[365] 363. In a separate discussion among [redacted] supervisors within the Privacy Organization, one theorized that project managers were probably being particularly forceful because "we're getting to end of half so I'm guessing shipping is super important to someone's [performance review] and they are pushing to get [part of their project] approved ASAP."[366] 364. Two weeks later, [redacted] resigned.[367] *** [361] Ex. 42 (Dec. 22, 2020 email fr. [redacted] to M. Zuckerberg, FBCO-ASSESS-XV-00018835 . [362] Ex. 46 (June 21, 2021 email fr. [redacted] to S. Sandberg, M. Zuckerberg, FBCO-ASSESS-XV-00014986). [363] Ex. 79 at 11:19-23. [364] Ex. 79 at 11:24–12:3. [365] Ex. 80 (June 23, 2021 Work Chat between M. Protti and [redacted], FBCO-ASSESS-XV-00024414). [366] Ex. 81 at 2 (June 21, 2021 Work Chat between [redacted], FBCO-ASSESS- XV-000247660. [367] Ex. 82 (July 6, 2021 email fr. [redacted] to [redacted], FBCO-ASSESS-XV-00024398).	[redacted].[1086] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the issues raised by [redacted] described herein. In fact, there is no evidence that pressure on Privacy Program Managers, as alleged by [redacted] could have resulted in shortcuts for Privacy Review. [redacted][1087] Moreover, Meta extensively investigated [redacted] concerns, meeting with him on multiple occasions after he raised them and before his resignation, and has no reason to believe [redacted] ignored or otherwise circumvented the Privacy Review process nor that he believed that others might have done so.[1088]
Paragraphs 365–70 365. In a December 2, 2020, email from Chief Privacy Officer Michel Protti to Chief Executive Officer Mark Zuckerberg and other Facebook personnel, Protti wrote: [redacted]	**Paragraphs 365–70** purport to set forth statements [redacted] between

[1086] *See* Ex. 73 (Apr. 29, 2022 resp. to Mar. 17, 2022 request 3) at 7–8.

[1087] *See id.* at 3, 6.

[1088] *See id.* at 6.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][368] 366. At his February 4, 2022, deposition, Chief Executive Officer Mark Zuckerberg was asked [redacted] Zuckerberg testified: [redacted][369] 367. In a December 14, 2020, email from [redacted] to Protti, Zuckerberg, and other Facebook personnel, [redacted] wrote: [redacted]	December 2020 and February 2022. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to [redacted] ● They falsely imply that [redacted] ● Paragraph 365 omits relevant context [redacted][1089] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the [redacted] being described herein.

[1089] Ex. 78 (Feb. 5, 2021 email thread fr. [redacted] to M. Zuckerberg, [redacted], and J. Newstead) at 21.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][370] 368. At his February 4, 2022, deposition, Chief Executive Officer Mark Zuckerberg was asked [redacted] Zuckerberg explained: [redacted][371] 369. At his February 4, 2022, deposition, Chief Executive Officer Mark Zuckerberg explained: [redacted]	

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][372] 370. At his February 4, 2022, deposition, Facebook Chief Executive Officer Mark Zuckerberg was asked, "Do you have any sense for how far along you are in tracking the various systems?" Zuckerberg responded, "I don't have a number. I don't have a number. But I do think we're making quite a good amount of progress, it's just that there's . . . a long tail. . . . Because I think the main systems, normally you prioritize the main systems first and that would cover a lot of the use cases, but for something like this, you know, when you're trying to answer questions, you're like, do you know for sure that this data was never used in this feature, you kind of need to make your way down the long tail of things, which aren't necessarily the most used systems."[373] *** [368] Ex. 78 (Dec. 2, 2020 email fr. M. Protti to [redacted], M. Zuckerberg, et al., FBCO-ASSESS-XV- 00022024). [369] Ex. 43 at 231:23–232:23. [370] Ex. 78 (Dec. 14, 2020 email from [redacted] to [redacted], M. Schroepfer, M. Zuckerberg, et al., FBCO- ASSESS-XV-00022013 to 00022014 . [371] Ex. 43 at 233:18–234:13. [372] Ex. 43 at 227:21–228:18. [373] Ex. 43 at 228:23–229:2.	
D. Third Party Risk Management (¶¶ 371–573)	
Paragraphs 371–74 371. The 2020 Order directs Facebook to consider the risks posed by its data-sharing arrangements with Covered Third Parties, and to develop appropriate safeguards to control for such risks.[374]	**Paragraphs 371–74** purport to set forth the scope of Meta's Third Party Risk Management ("TPRM") Domain as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because:

Preliminary Findings of Fact (PFOF)	Response to PFOF
372. Specifically, the Order requires Facebook to assess and document internal and external risks to the privacy, confidentiality, or integrity of Covered Information that could result in the unauthorized access, collection, use, destruction, or disclosure of such information in each area of its operation, including developer operations, partnerships with Covered Third Parties, and sharing of Covered Information with Covered Third Parties.[375] 373. The Order further requires Facebook to design, implement, maintain, and document safeguards that control for the material internal and external risks it identifies. Each safeguard must be based on the volume and sensitivity of the Covered Information that is at risk, and the likelihood the risk could be realized and result in the unauthorized access, collection, use, destruction, or disclosure of the Covered Information.[376] 374. Specifically with respect to any Covered Third Party that obtains or otherwise has access to Covered Information from Facebook for use in an independent third-party consumer application or website, Part VII.E.1. of the Order requires Facebook's safeguards to include: a) requiring an annual self-certification by each Covered Third Party that certifies (i) its compliance with each of Facebook's Platform Terms and	• They fail to define or adhere to the defined term "Covered Third Party." The Order defines "Covered Third Party" to mean "any individual or entity that uses or receives Covered Information obtained by or on behalf of Respondent outside of a User-initiated transfer of Covered Information as part of a data portability protocol or standard, other than: (1) a service provider of Respondent that (i) uses the Covered Information for and at the direction of Respondent and no other individual or entity and for no other purpose; and (ii) does not disclose the Covered Information, or any individually identifiable information derived from such Covered Information, except for, and at the direction of, Respondent, for the purpose of providing services requested by a User and for no other purpose; or 2) any entity that uses the Covered Information only as reasonably necessary: (i) to comply with applicable law, regulation, or legal process, or (ii) to enforce Respondent's terms of use, or (iii) to detect, prevent, or mitigate fraud or security vulnerabilities."[1090] • They fail to reference Part VII.H. of the Order, which sets forth one of the Order requirements directly relevant to Meta's TPRM domain, and therefore give the misimpression that all third parties are Covered Third Parties.[1091] Part VII.H. requires that Meta "must, within 180 days of the effective date of

[1090] Order, Definition E.

[1091] *See, e.g.*, Ex. 4 (2021 Assessment Report) at 134–37.

Preliminary Findings of Fact (PFOF)	Response to PFOF
ii) the purposes or uses for each type of Covered Information to which it requests or continued to have access, and that each specified purpose or use complies with Facebook's Platform Terms; b) denying or terminating access to any type of Covered Information that the Covered Third Party fails to certify pursuant to Part VII.E.1.a.(ii) or, if the Covered Third Party fails to complete the annual self-certification, denying or terminating access to all Covered Information unless the Covered Third Party cures such failure within a reasonable time not to exceed 30 days; c) monitoring Covered Third Party compliance with Facebook's Platform Terms through measures including, but not limited to, ongoing manual reviews and automated scans, and regular assessments, audits, or other technical and operational testing at least once every 12 months; and d) enforcing against any Covered Third Party violations of Facebook's Platform Terms based solely on the severity, nature, and impact of the violation; the Covered Third Party's malicious conduct or history of violations; and applicable law.[377] [374] Ex. 3, Parts VII.D. & E. [375] Ex. 3, Part VII.D.	this Order . . . [s]elect and retain service providers capable of safeguarding Covered Information they receive from Respondent, and contractually require service providers to implement and maintain safeguards for Covered Information."[1092] As mentioned in the previous paragraph, service providers are not "Covered Third Parties" under Section VII.E.

[1092] Order, Part VII.H.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[376] Ex. 3, Part VII.E. [377] Ex. 3, Part VII.E.1.	
Paragraph 375–91 375. To address the Order requirements, Facebook developed its Third Party Risk Management control domain, which includes safeguards governing third-party developer access to Covered Information through Public APIs for users in a consumer-facing website or application.[378] 376. Most third-party developers utilize Public APIs, which are available to all developers on the Company's developer platforms for Facebook and Oculus.[379] 377. Facebook also grants third-party access to Covered Information through Partner APIs, which it makes available on an individual partner basis through a separate approval process.[380] 378. Use of the Public APIs is governed by Facebook's mandatory Platform Product Terms.[381] 379. Developers on the Oculus developer platform must agree to the Oculus Developer Data Use policy.[382] 380. In addition, depending on the API to which they seek access, third-party developers may be required to agree to Developer Policies, Facebook Terms of Service, Instagram Terms of Use, the Facebook Commercial Terms, the Business Tools Terms, and other applicable Facebook Product terms.[383]	**Paragraphs 375–91** purport to set forth the scope of Meta's TPRM Domain created in response to Part VII. E. of the 2020 Order, as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Paragraph 375 misstates the scope of Part VII.E.1 of the Order (which it appears to be referencing), and how Meta has undertaken to comply with that obligation. Part VII.E.1 applies to the sharing of Covered Information with any Covered Third Party *"for use in an independent, third-party consumer application or website,"*[1093] not "for users in a consumer-facing website or application" (as Paragraph 375 misstates). ● They oversimplify and omit large segments of Meta's comprehensive policies relating to Third Party Risk Management. o First, the Commission suggests that Meta's TPRM domain addresses VII.E Order obligations solely through safeguards concerning "third-party developer access to Covered Information through Public APIs for users in a consumer-facing website or application."[1094] In addition to Public APIs, Meta's Order

[1093] Order, Part VII.E.1.

[1094] *Supra* Section IV.D, Resp. to PFOF ¶ 375.

Preliminary Findings of Fact (PFOF)	Response to PFOF
381. Facebook's Platform Product Terms describe third-party developers' obligations, and include privacy and security provisions, which govern use of Covered Information accessed or received through a Public API.[384] 382. Facebook's Platform Terms generally prohibit developers from sharing Facebook user data with other parties so-called "fourth parties"), and obligate developers to delete user data upon the user's request.[385] 383. Facebook uses the term "advanced permissions" or "advanced privileges" to refer to circumstances when a third-party developer has access through Facebook's APIs to Covered Information that goes beyond a Facebook user's publicly available profile information and email address.[386] 384. Publicly available profile information includes information that is always public on Facebook, such as the user's name, user ID, profile picture, and cover photo.[387] 385. Publicly available information may also include any information the user has chosen to designate as public through their settings.[388] 386. With advanced permissions or privileges, Covered Third Party developers may access a user's nonpublic information,	obligations under VII.E extend to Partner APIs.[1095] Partner APIs are APIs not publicly available to all platform developers, but rather only made available on an individual partner basis.[1096] The TPRM domain [redacted][1097] o Second, the sharing of Covered Information with Covered Third Parties in the E.1 context (i.e., for use in an independent, third-party consumer application or website) is just one of many focuses of Meta's TPRM domain. Indeed, the TPRM domain is broadly responsible for [redacted]

[1095] Ex. 4 (2021 Assessment Report) at 137.

[1096] Ex. 5 (Oct. 29, 2021 resp. to September 1, 2021 request 1) at 27.

[1097] *Id.* at 26–27; Ex. 4 (2021 Assessment Report) at 137–39.

Preliminary Findings of Fact (PFOF)	Response to PFOF
such as the user's photos, posts, religious views, political views, and relationship status.[389] 387. Facebook employs different processes to evaluate Covered Third Parties' access to Covered Information depending on the applicable API. When developers seek to use a Public API to request access to Covered Information other than a user's public profile information and email address (referred to as "advanced permissions" or "advanced privileges"), Facebook conditions access through the App Review process.[390] 388. In App Review, a team of Developer Operations reviewers evaluates the app's use of the Covered Information against Facebook's permitted uses for such information, as well as the developer's compliance with Facebook's Platform Terms and developer policies, and decides whether to approve or deny access.[391] 389. The App Review process occurs when a third-party app first seeks API permissions.[392] 390. The App Review process [redacted][393] 391. [redacted]	[redacted][1098] ● They may be read to suggest that Meta "address[es] the Order requirements" [redacted] In actuality, [redacted][1099] and [redacted][1100] [redacted] Contrary to the FTC's misleading presentation, Meta complies with its Order obligations [redacted] For instance: ○ **Parts VII.E.1.a, VII.E.1.b**. To address Parts VII.E.1.a (requiring Covered Third Parties to self-certify annually that they comply with Meta's Platform Terms)[1101] and VII.E.1.b (terminating access for Covered Third Parties that fail to self-certify pursuant to VII.E.1.a)[1102] of the Order, Meta [redacted]

[1098] *See, e.g.*, Ex. 4 (2021 Assessment Report) at 134–35; Ex. D (2023 Assessment Report) at 164–65.

[1099] Ex. 4 (2021 Assessment Report) at 134.

[1100] Ex. D (2023 Assessment Report) at 164.

[1101] Order, Part VII.E.1.a.

[1102] Order, Part VII.E.1.b.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted]394	[redacted]1103 [redacted]1104 Specifically, [redacted]1105 [redacted]: ▪ Meta obtains [redacted]1106

[378] Ex. 5 at 26, 30–31 (Oct. 29, 2021 resp. to Sept. 1, 2021 requests 1, 9). Facebook's Third-Party Oversight and Management (TPOM) program also addresses Facebook's contract-based engagements with service providers and other products-based engagements such as business and ads-related APIs. Ex. 79 at 109:1-110:11.

[379] Ex. 5 at 26, 30–31 (Oct. 29, 2021 resp. to Sept. 1, 2021 requests 1, 9); Ex. 79 at 110:5–21.

[380] Ex. 5 at 26, 30–31 (Oct. 29, 2021 resp. to Sept. 1, 2021 requests 1, 9); Ex. 79 at 110:5–21.

[381] Ex. 5 at 26, 30–31 (Oct. 29, 2021 resp. to Sept. 1, 2021 requests 1, 9).

[382] Ex. 5 at 26, 30–31 (Oct. 29, 2021 resp. to Sept. 1, 2021 requests 1, 9).

[383] Ex. 5 at 26, 30–31 (Oct. 29, 2021 resp. to Sept. 1, 2021 requests 1, 9); Ex. 79 at 131:19–132:3.

[384] Ex. 5 at 26, 30–31 (Oct. 29, 2021 resp. to Sept. 1, 2021 requests 1, 9).

[385] Ex. 5 at 26, 30–31 (Oct. 29, 2021 resp. to Sept. 1, 2021 requests 1, 9).

[386] Ex. 79 at 115:7–116:6.

[387] Ex. 79 at 115:7–116:6.

[388] Ex. 79 at 115:7–116:6.

[389] Ex. 79 at 117–118:1.

[390] Ex. 5 at 26 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 1); Ex. 79 at 120:7–19.

[391] Ex. 5 at 26–27 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 1); Ex. 79 at 122:22–124:16.

[392] Ex. 5 at 26–27 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 1).

[393] Ex. 5 at 26–27 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 1).

[1103] *See* Ex. 4 (2021 Assessment Report) at 148.

[1104] *Id.* at 142

[1105] *See id.*; *see also* Ex. D (2023 Assessment Report) at 172.

[1106] Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 4) at 43.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[394] Ex. 5 at 27 (Oct. 29, 2021 resp to Sept. 1, 2021 request 1); Ex. 79 at 121:21–122:17.	[redacted][1107][redacted][1108][redacted][1109][redacted][1110][redacted]

[1107] *Id*.

[1108] *Id*.

[1109] *Id*. at 43–44.

[1110] *Id.* at 44.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1111] ▪ Meta maintains [redacted][1112][1113][1114][1115]

[1111] *Id.*

[1112] *Id.*

[1113] *Id.*

[1114] *Id.*

[1115] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1116] [redacted][117] ▪ Meta maintains [redacted][1118] [redacted][1119]

[1116] *Id.*

[1117] *Id.*

[1118] *Id.*

[1119] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1120] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted][1121] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted][1122] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted][1123] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted][1124] ○ **Part VII.E.1.c**. To address VII.E.1.c of the Order, Meta has designed, implemented, documented, and maintains numerous safeguards that

[1120] *Id.*

[1121] *Id.*

[1122] *Id.*

[1123] *Id.*

[1124] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	"[m]onitor[] Covered Third Party compliance with Respondent's Platform Terms through . . . ongoing manual reviews and automated scans" as well as numerous other safeguards that "[m]onitor[] Covered Third Party compliance with Respondent's Platform Terms through . . . regular assessments, audits, or other technical and operational testing at least once every twelve (12) months."[1125] ▪ As of late 2021, Meta's "ongoing manual reviews and automated scans" ("ongoing monitoring activities") included: ● [redacted]

[1125] Order, Part VII.E.1.c.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted]1126 • [redacted]1127 • [redacted]

[1126] Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 3) at 40.

[1127] *Id.* at 40–41.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1129] • [redacted][1130]

[1128] *Id.* at 41.

[1129] *See* Ex. D (2023 Assessment Report) at 170.

[1130] Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 3) at 41.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1131] Examples of the [redacted] ○ [redacted] ○ [redacted]

[1131] *See* Ex. 4 (2021 Assessment Report) at 151.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted]

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted]

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1132] ▪ Meta's "regular assessments, audits, or other technical and operational testing at least once every twelve (12) months" ("annual monitoring activities") include: ● [redacted][1133]

[1132] *See* Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 3) at 41–42.

[1133] *Id*. at 37.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1134] [redacted][1135] • [redacted][1136]

[1134] *Id.*

[1135] *Id.*

[1136] Ex. 5 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 5) at 42.

Preliminary Findings of Fact (PFOF)	Response to PFOF

[1137] *Id*.

[1138] *Id*.

[1139] *Id*. at 42–43.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	• [redacted][1140] • [redacted][1141]

[1140] Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 3) at 40.

[1141] Ex. 5 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 1) at 27; Ex. D (2023 Assessment Report) at 169, 225.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1142] [redacted][1143] [redacted][1144] [redacted]

[1142] Ex. D (2023 Assessment Report) at 169, 225.

[1143] Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 3) at 38; *see also* Ex. D (2023 Assessment Report) at 170.

[1144] Ex.6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 3) at 38–40; Ex. D (2023 Assessment Report) at 169–70.

Preliminary Findings of Fact (PFOF)	Response to PFOF

[1145] Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 3) at 38.

[1146] *Id.*

[1147] *Id.*

[1148] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1149] [redacted][1150] [redacted]

[1149] Ex. D (2023 Assessment Report) at 170.

[1150] Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request) at 38.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted]

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1151] ○ [redacted][1152] ○ [redacted]

[1151] *Id.*

[1152] Ex. D (2023 Assessment Report) at 253.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1153] ▪ Meta also [redacted][1154] [redacted][1155] In addition: ● [redacted]

[1153] Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 3) at 38.

[1154] *See* Ex. 4 (2021 Assessment Report) at 138–44.

[1155] *See id.* at 139, 205.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1156] • [redacted][1157] • [redacted]

[1156] Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 3) at 40–43.

[1157] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1158] • [redacted][1159] ○ **Part VII.E.1.d**. To address VII.E.1.d of the Order, Meta has designed, implemented, documented, and maintains numerous safeguards that ensure that Meta "[e]nforc[es] against any [E.1.] Covered Third Party violations of [Meta]'s Platform Terms based solely on the severity, nature, and impact of the violation; the Covered Third Party's malicious conduct or history of violations; and applicable law."[1160] ▪ Meta maintains [redacted]

[1158] *Id.*

[1159] *See id.*

[1160] *See* Order, Part VII.E.1.d.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1161] ▪ Meta maintains [redacted][1162] ○ **Part VII.H**. To address VII.H of the Order, Meta has designed, implemented, documented, and maintains numerous safeguards designed to ensure that it "[s]elect[s] and retain[s] service providers capable of safeguarding Covered Information they receive from [Meta], and contractually require[s] service providers to implement and maintain safeguards for Covered Information."[1163]

[1161] *See* Ex. 4 (2021 Assessment Report) at 143.

[1162] *Id.* at 143–44.

[1163] *See* Order, Part VII.H.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	▪ Before Meta implemented the Privacy Program, it employed a number of measures to manage data privacy and security risks related to these contractual engagements.[1164] ▪ For example, Meta maintained [redacted][1165] [redacted][1166] [redacted][1167] [redacted][1168]

[1164] Ex. 10 (Oct. 15, 2022 resp. to Sept. 1, 2021 request 8) at 4.

[1165] *Id.*

[1166] *Id.*

[1167] *Id.* 4–5.

[1168] *Id.* at 5.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1169][redacted][1170][redacted][1171][redacted][1172][redacted]

[1169] *Id.*

[1170] *Id.*

[1171] *Id.*

[1172] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1173][redacted][1174] ▪ Meta also [redacted][1175][redacted][1176]

[1173] *Id.*

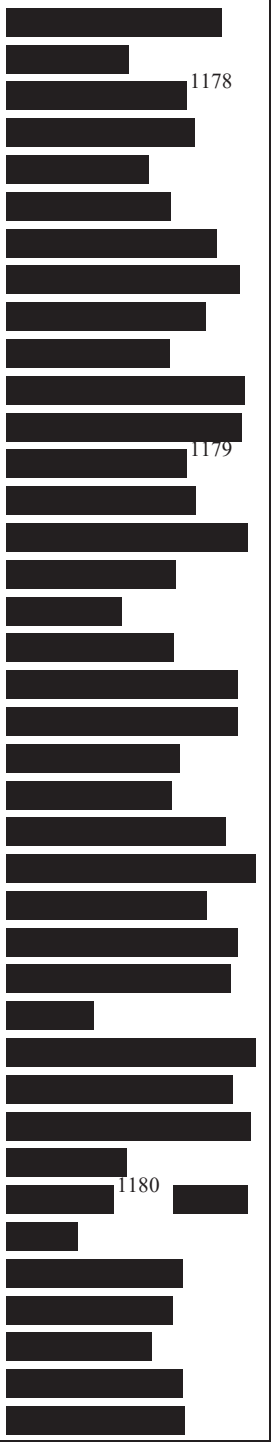
[1174] *Id.*

[1175] *Id.* at 4–5.

[1176] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	• [redacted][1177]

[1177] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	

[1178] *Id.*

[1179] *Id.*

[1180] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1181] ● Paragraph 376 wrongly suggests that all third-party developers are given access to *all* Public APIs. [redacted][1182][1183]

[1181] *Id.* at 5–6.

[1182] *See* Ex. 4 (2021 Assessment Report) at 138; *see also* Ex. D (2023 Assessment Report) at 168.

[1183] *See* Ex. 4 (2021 Assessment Report) at 139; *see also* Ex. D (2023 Assessment Report) at 169.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	● Paragraphs 380, 382, 385, and 386 are inaccurate and misleading insofar as they mischaracterize various aspects of Meta's terms of service. o First, Paragraph 380 incorrectly suggests that third-party developers "may be required" to agree to "Developer Policies" and "Facebook Terms of Service." In actuality, all individuals with a developer account must agree to the Facebook Terms of Service (now called the Meta Terms of Service) and Meta Platform Terms, which incorporate Meta's Developer Policies.[1184] o Second, Paragraph 382 states that "Facebook's Platform Terms generally prohibit developers from sharing Facebook user data with other parties . . . and obligate developers to delete user data upon the user's request." Meta's Platform Terms—which the Order defines to mean "Respondent's written terms, policies, and procedures relating to the privacy, confidentiality, or Integrity of Covered Information that apply to Covered Third Parties"—cover far more topics.[1185] For instance, the Facebook Platform Terms,[1186] include extensive provisions concerning data use, privacy policy obligations, relationships with service providers and tech providers, and data security.

[1184] *See id.* at 167–68.

[1185] *See id.* at 266.

[1186] Available at https://developers.facebook.com/terms/dfc_platform_terms/.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	○ Third, Paragraph 385 incorrectly suggests that "[p]ublicly available information may also include any information the user has chosen to designate as public through their settings," but fails to recognize [redacted][1187] ○ Fourth, Paragraph 386 incorrectly suggests that "developers may access a user's nonpublic . . . religious views, political views, and relationship status." Meta deprecated the Facebook Login API endpoints associated with these categories of data in 2018.[1188] Moreover, Meta removed the religious views, political views, addresses and "Interested in" fields from Facebook profiles entirely in December 2022.[1189]

[1187] *See* Ex. D (2023 Assessment Report) at 228.

[1188] Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 3) at 42; *see also* https://developers.facebook.com/blog/post/2018/04/04/facebook-api-platform-product-changes/ ("[T]he following deprecations are effective immediately and will return empty data as if a person didn't fill in this information on their Profile[:] religion and political views, relationship status, relationship details, custom friend lists, about me, education history, work history, my website URL, book reading activity, fitness activity, music listening activity, video watch activity, news reading activity, games activity.").

[1189] *See* Adam Malik, "Facebook is Removing Several Information Fields from Profiles, including Religious and Political Views," TechCrunch (Nov. 17, 2022), https://techcrunch.com/2022/11/17/facebook-removing-profile-information-fields-religious-political-views/.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	● Paragraphs 388–90 are inaccurate and misleading insofar as they mischaracterize the App Review process: ● Paragraph 388 wrongly indicates that "[i]n App Review, a team of Developer Operations reviewers evaluates the app's use of the Covered Information against Facebook's permitted uses for such information[.]" [redacted][1190] ● Paragraph 389 wrongly indicates that App Review is triggered "when a third-party app first seeks API permissions," when in actuality [redacted][1191] ● Paragraph 390 wrongly suggests that the App Review [redacted][1192]

[1190] *See* Ex. 4 (2021 Assessment Report) at 139 (describing App Review process).

[1191] *See id.* at 195–96 (describing App Review safeguard); Ex. D (2023 Assessment Report) at 224–25 (same).

[1192] Ex. 5 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 1) at 26–27.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	• Paragraph 391 incorrectly suggests [redacted][1193] • They fail to clarify that the Assessor briefed the FTC on Meta's TPRM domain and explained that Meta has taken an [redacted][1194] In the 2023 Assessment Report, the Assessor recognized [redacted][1195] [redacted][1196]

[1193] *See* Ex. D (2023 Assessment Report) 169, 226.

[1194] Ex. B (May 3, 2023 Assessor Presentation to FTC) at 6; *see also* Ex. D (2023 Assessment Report at 348 Appendix E).

[1195] *See* Ex. D (2023 Assessment Report) at 184.

[1196] *See id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1197]
Paragraphs 392-93 392. The Assessor identified [redacted][395] 393. [redacted][396] *** [395] Ex. 4 at 150. [396] Ex. 4 at 150.	**Paragraphs 392-93** purport to describe certain Assessor observations [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: • Paragraph 393 misstates that [redacted] To the contrary, [redacted] For example, the initial Assessment Report [redacted][1198]

[1197] *Id.* at 11.

[1198] Ex. 4 (2021 Assessment Report) at 155 (emphasis added).

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1199][redacted][1200] ● Paragraph 393 incorrectly asserts that Meta [redacted][1201]
Paragraphs 394–98 394. The Assessor observed that [redacted][397] 395. [redacted]	**Paragraphs 394–98** purport to describe certain Assessor observations [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because:

[1199] Ex. 5 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 1) at 27.

[1200] *Id.*; *see also infra* Section IV.D, Resp. to PFOF ¶¶ 430–32.

[1201] *See* Ex. D (2023 Assessment Report) at 184 [redacted].

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][398] 396. Throughout its report, the Assessor referred to Covered Third Parties that obtained or otherwise had access to Covered Information for use in an independent, third-party consumer application or website as "E1 Covered Third Parties," to indicate the requirements of the Part VII.E.1 of the Order applied.[399] 397. [redacted][400] 398. The Assessor found that [redacted][401] *** [397] Ex. 4 at 152. [398] Ex. 4 at 152. [399] Ex. 4 at 150. [400] Ex. 4 at 152. [401] Ex. 4 at 152.	• Nothing in Part VII.E.1.c of the Order required Meta to [redacted] of E.1 Covered Third Parties. In doing so through the development and implementation of its [redacted] Meta affirmatively chose to implement safeguards and processes beyond those specifically required by the Order. • They fail to acknowledge that the Order does not require Meta to [redacted] nor is it the case that Meta could not have designed a [redacted] that satisfied or exceeded the Order requirements. The relevant Order provision—Part VII.E.1.c—requires Meta to "[d]esign, implement, maintain, and document safeguards" that "with respect to any Covered Third Party that obtains or otherwise has access to Covered Information from Respondent for use in an independent, third-party consumer application or website, . . . shall include . . . [m]onitoring Covered Third Party compliance with Respondent's Platform Terms through measures including, but not limited to, ongoing manual reviews and automated scans, and regular assessments, audits, or other technical and operational testing at least once every twelve (12)

Preliminary Findings of Fact (PFOF)	Response to PFOF
	months."[1202] The Order further requires that such safeguards be "based on the volume and sensitivity of the Covered Information that is at risk, and the likelihood that the risk could be realized and result in the unauthorized access, collection, use, destruction, or disclosure of the Covered Information."[1203] Meta complies with—and indeed exceeds—its obligations under Part VII.E.1.c, including by virtue of the various processes described in Section IV.D, Resp. to PFOF ¶¶ 375–91, *supra*. ● They fail to sufficiently clarify that the Assessor observed that [redacted][1204] The Assessor observed that [redacted][1205] ● Paragraph 397 claims that Meta [redacted][1206] ● They fail to mention that Meta

[1202] Order, Part VII.E.

[1203] *Id.*

[1204] Ex. 4 (2021 Assessment Report) at 150–53.

[1205] *Id.*

[1206] *Id.* at 152.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	dramatically expanded and matured its [redacted][1207] ● They fail to mention that the Assessor [redacted] as they existed during the initial six-month Assessment period. The Assessor previewed these remediations in its initial Assessment Report,[1208] 2021 Assessment Report at 153, and has confirmed that they were implemented.[1209] ● They fail to clarify that the Assessor briefed the FTC on Meta's TPRM domain and explained [redacted][1210] ● They fail to clarify that neither the

[1207] *See* Ex. D (2023 Assessment Report) at 184; Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 3) at 38–40.

[1208] Ex. 4 (2021 Assessment Report) at 153.

[1209] Ex. D (2023 Assessment Report) at 184 [redacted].

[1210] Ex. B (May 3, 2023 Assessor Presentation to FTC) at 6; *see also* Ex. D (2023 Assessment Report at 348 Appendix E).

Preliminary Findings of Fact (PFOF)	Response to PFOF
	Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations [redacted][1211]
Paragraphs 399–407 399. Facebook completed an initial risk assessment of E1 Covered Third Parties in or about August 2021.[402] 400. Facebook finished implementing the automated process for its formal risk assessment of E1 Covered Third Parties on or about October 18, 2021.[403] 401. [redacted][404] 402. Facebook began using the risk-tier designations in its newly developed risk assessment framework for E1 Covered Third Parties to subject apps in higher-risk tiers to [redacted].[405] 403. After assigning E1 Covered Third Party apps into risk-tier designations pursuant to the newly developed risk assessment framework, Facebook began subjecting higher-risk apps to the following monitoring measures: a detailed	**Paragraphs 399–407** purport to describe certain Assessor observations [redacted] as reflected in the initial Assessment Report, as well as certain Assessor observations about [redacted], as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to [redacted] In completing [redacted], Meta affirmatively chose to implement safeguards beyond those specifically required by the Order. ● They fail to acknowledge that the

[1211] *See* Ex. 4 (2021 Assessment Report) at 152; *see also* Ex. D (2023 Assessment Report) at 184.

Preliminary Findings of Fact (PFOF)	Response to PFOF
questionnaire that Facebook called the Data Protection Assessment (DPA); an enhanced privacy policy review (for apps in the highest-risk tier only); and an enhanced version of App Re-Review (for all E1 Covered Third Party Apps).[406] 404. Facebook began sending Data Protection Assessment (DPA) questionnaires to developers for apps in higher-risk tiers on Facebook's platform on August 9, 2021, [redacted].[407] 405. Facebook began conducting enhanced privacy policy reviews on apps in the highest-risk tier on or about August 16, 2021.[408] 406. Facebook began conducting enhanced App Re-Reviews on apps on or about September 7, 2021, for apps on the Facebook platform and [redacted].[409] 407. [redacted].[410] [402] Ex. 79 at 135:22–136:2 [403] Ex. 79 at 136:19–137:17, 139:11–21. [404] Ex. 6 at 37 n.36 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 3). [405] Ex. 79 at 141:1–142:13.	process by which Meta, [redacted] is not a process obligated by the Order. Rather, Meta exceeds its Order requirements by the performance of this process. ● Paragraph 402 fails to include additional context regarding the [redacted].[1212] [redacted].[1213] [redacted].[1214] ● They neglect to [redacted]

[1212] Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 3) at 37–38; *see also* Ex. 17 (Dec. 23, 2021 resp. to Sept. 22, 2021 request 1) at 1.

[1213] *See* Ex. D (2023 Assessment Report) at 184; Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 1) at 22–24.

[1214] *See* Ex. D (2023 Assessment Report) at 184, 254.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[406] Ex. 79 at 142–14–143:15. [407] Ex. 79 at 144:20–146:3. [408] Ex. 79 at 146:9–147:6. [409] Ex. 79 at 149:23–151:25. [410] Ex. 79 at 161:11–163:18.	[redacted][1215]: [redacted] ● Paragraph 407 fails to mention [redacted][1216] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with Meta's approach to [redacted].[1217]

[1215] Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 1) at 27.

[1216] Ex. 79 (M. Protti Dep.) at 161–62.

[1217] *See* Ex. 4 (2021 Assessment Report) at 150–53.

Preliminary Findings of Fact (PFOF)	Response to PFOF
Paragraphs 408–20 408. [redacted][411] the Assessor found [redacted].[412] 409. Specifically, the Assessor found [redacted].[413] 410. However, the Assessor found that, [redacted].[414] 411. In particular, the Assessor found that, [redacted].[415] 412. For the broader period from October 25, 2020 to September 22, 2021, there were [redacted] E1 Covered Third Party apps with advanced privileges (i.e., apps	**Paragraphs 408–20** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII.E and VII.D of the Order required Meta to [redacted] In implementing [redacted] Meta affirmatively chose to implement safeguards beyond those specifically required by the Order. Part VII.E and VII.D do not require such safeguards. ● They fail to acknowledge that nothing in the Order requires Meta to conduct any particular processes for [redacted] Further, the Order does not reference the concept of "advanced privileges," much less obligate any differentiated treatment of apps with access to such privileges. Nor does the Order require that Meta develop safeguards specifically designed to [redacted]

Preliminary Findings of Fact (PFOF)	Response to PFOF
that had access, for one or more days during the period, to APIs that provided access to Covered Information other than public profile information and email address).[416] 413. Specifically, the Assessor found [redacted][417] 414. As of October 2020, Facebook's measures to monitor E1 Covered Third Parties' compliance with Platform Terms comprised a requirement that apps provide an annual self- certification (the Data Use Checkups (DUC)), an annual App Re-Review process, and ongoing "signals-based" monitoring (such as through reports from Facebook employees, press, or the Company's bug bounty program . In addition, Facebook stated that [redacted][418]. 415. The Assessor found that [redacted]	[redacted] Part VII.E.1.c speaks for itself, and Meta went beyond those requirements by virtue of the processes described in Section IV.D, Resp. to PFOF ¶¶ 375–91, *supra*. Moreover, the Order does not obligate Meta to [redacted] Rather, Part VII.E.1.c affords Meta considerable flexibility in determining the right approach to monitoring E.1 Covered Third Party compliance with Meta's Platform Terms. Meta ultimately [redacted][1218] ● Paragraph 414, which purports to describe "[Meta's] measures to monitor E1 Covered Third Parties' compliance with Platform Terms" provides an incomplete description of such "measures." A more complete and accurate overview of Meta's monitoring activities is provided in Section IV.D, Resp. to PFOF ¶¶ 375–91, *supra*. ● They fail to discuss material facts regarding Meta's VII.E.1.c monitoring activities [redacted]

[1218] Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 1) at 22–23.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted]. [419] 416. [redacted] Facebook's annual self-certification process (also called the Data Use Checkup (DUC)), which the Company implemented to satisfy the requirements of Part VII.1.a. of the Order,[420] asks all E1 Covered Third Parties to certify that they adhere to the Platform Terms [redacted]. [421] 417. Facebook's annual self-certification requirement (the Data Use Checkup DUC)) applies to all E1 Covered Third Parties using Facebook's APIs, whether they use the APIs for advanced privileges to access users' nonpublic information, or whether they use APIs to access only the users' public profile information and email address.[422] 418. The Order requires that Facebook develop appropriate safeguards "based on the volume and sensitivity of the Covered Information that is at risk, and the likelihood that the risk could be realized . . . ."[423]	[redacted] listed in Paragraph 403.[1219] ● They fail to sufficiently clarify that the Assessor observed that Meta's [redacted] [1220] [1221] ● They fail to mention that since the initial Assessment, [redacted] [1222] [1223] ● They fail to mention that the Assessor has found that the remediation that Meta implemented following the initial Assessment period satisfactorily resolved the concerns the Assessor raised regarding [redacted]

[1219] *See supra* Section IV.D, Resp. to PFOF ¶¶ 399–407.

[1220] Ex. 4 (2021 Assessment Report) at 150–53.

[1221] *Id.*

[1222] *See* Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 1) at 27.

[1223] *See* Ex. D (2023 Assessment Report) at 170.

Preliminary Findings of Fact (PFOF)	Response to PFOF
419. [redacted].[424] 420. The Assessor found that [redacted].[425]	[redacted] as they existed during the initial six-month Assessment period. The Assessor observed in the 2021 Assessment Report, that [redacted].[1224] While Meta disagrees with the assertion that [redacted] even the Assessor acknowledged the time it would take to mature the program to achieve Meta's goals of [redacted].[1225] [redacted].[1226] ● They fail to acknowledge that the Assessor briefed the FTC on Meta's TPRM domain [redacted]."[1227] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted]

[411] Part VII.E. of the Order specifically requires this approach. *See* Ex. 3, Part VII.E. ("Each safeguard must be based on the volume and sensitivity of the Covered Information that is at risk, and the likelihood that the risk could be realized and result in the unauthorized access, collection, use, destruction, or disclosure of the Covered Information.").
[412] Ex. 4 at 150, 152.
[413] Ex. 4 at 150, 152.
[414] Ex. 4 at 151–52.
[415] Ex. 4 at 151–52.
[416] Ex. 7 at 12–14 (Dec. 3, 2021 resp. to Sept. 22, 2021 request 2).
[417] Ex. 4 at 152–53; Ex. 6 at 43 (Nov. 19, 2021 resp. to Sept 22, 2021 request 4).
[418] Ex. 79 at 132:14–134:17.
[419] Ex. 4 at 152–53.

[1224] Ex. 4 (2021 Assessment Report) at 153.

[1225] *See* Ex. D (2023 Assessment Report) at 184 [redacted].

[1226] *See* Ex. D (2023 Assessment Report) at 184 [redacted].

[1227] Ex. B (May 3, 2023 Assessor Presentation to FTC) at 6.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[420] See Exh. 3, 2020 Order, Part VII.E.1.a. ("[S]afeguards shall include . . . [r]equiring an annual self-certification by each Covered Third Party that certifies: (i) its compliance with each of Respondent's Platform Terms; and (ii) the purpose(s) or use(s) for each type of Covered Information to which it requests or continues to have access, and that each specified purpose or use complies with Respondent's Platform Terms"). [421] Ex. 4 at 152–53; Ex. 6 at 43 (Nov. 19, 2021 resp. to Sept 22, 2021 request 4); Ex. 79 at 125:7–18, 126:4–13. [422] Ex. 79 at 126:4–13. [423] Ex. 3, Parts VII.D. & E. [424] Ex. 4 at 151–52. [425] Ex. 4 at 151–52.	[redacted], as reflected in the initial Assessment Report described herein.[1228]
Paragraphs 421–23 421. At his February 4, 2022, deposition, Facebook Chief Executive Officer Mark Zuckerberg was asked "Do you agree with Protiviti's observation that [redacted]" Zuckerberg responded, [redacted][426] 422. Later at his February 4, 2022 deposition, Chief Executive Officer Mark Zuckerberg stated, [redacted]	**Paragraphs 421–23** purport to describe certain aspects of Meta CEO Mark Zuckerberg's deposition testimony concerning the Assessor observations about details of the TPRM domain as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● They exclude key portions of deposition testimony [redacted][1229] [redacted][1230] [redacted]

[1228] *See* Ex. 4 (2021 Assessment Report) at 152–53; *see also* Ex. D (2023 Assessment Report) at 184–85.

[1229] *See* Ex. 43 (M. Zuckerberg Dep.) at 222:1–223:9.

[1230] *See id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][427] 423. At his February 4, 2022 deposition, Facebook Chief Executive Officer Mark Zuckerberg stated: "I do think that the development platform area and the third party data has been – it's a difficult governance and big data access problem. . . . [I]t's been a challenging one to build a program that's as strong as we would need to. Just because inherently what's happening is people are . . . signing up to give data or to have data flow outside of the system to people we don't necessarily control. I mean, you can give us commitments, but we . . . don't have perfect ability to control what they do after that. So I think . . . there are a bunch of steps that we can take to improve this, but it may be one of the bigger areas of risk over the long term as well."[428] ***	[redacted] ○ [redacted][1231] ○ [redacted][1232] ○ [redacted][1234] ○ [redacted]

[426] Ex. 43 at 213:16–21.
[427] Ex. 43 at 222:23–223:4.
[428] Ex. 43 at 193:4–20.

[1231] *See id.* [redacted].

[1232] *Id.* at 28:3–18.

[1233] *Id.* at 58:1–59:19.

[1234] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1235][redacted][1236] ○ [redacted][1237]
Paragraph 424–29 424. The Assessor found [redacted].[429] 425. The Order specifically requires Facebook to develop safeguards that include "[m]onitoring Covered Third Party compliance with [Facebook]'s Platform Terms through measures including, but not limited to, ongoing manual reviews and automated scans, and regular assessments, audits, or other technical and operational testing at least	**Paragraphs 424–29** purport to describe certain Assessor observations about Meta's VII.E.1.c monitoring processes as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII.E.1.c of the Order required Meta to [redacted] or to implement any [redacted]

[1235] *Id.* at 40:3–24.

[1236] *Id.*

[1237] *Id.* at 34:20–35:16.

Preliminary Findings of Fact (PFOF)	Response to PFOF
once every twelve (12) months."[430] 426. [redacted].[431] 427. Facebook stated it also engages in other measures such as automated rate limiting, automated detection of missing privacy policies, and signals-based monitoring, which may alert the Company to the existence of non-compliant apps.[432] 428. Signals-based monitoring in this context means Facebook's efforts to collect and analyze information from various sources, including the Company's global threat intelligence and social media monitoring teams, external data misuse teams, external reporting channels for developers, data abuse bounty programs, and leads from public sources like news articles and consumer watchdog organizations.[433] 429. The Assessor's report noted that [redacted].[434] [429] Ex. 4 at 152. [430] Ex. 3, Part VII.E.1.c. [431] Ex. 6 at 37 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 3)	[redacted] Instead, Part VII.E.1.c requires Meta to develop safeguards that include "[m]onitoring Covered Third Party compliance with [Meta]'s Platform Terms through measures including, but not limited to, ongoing manual reviews and automated scans, and regular assessments, audits, or other technical and operational testing at least once every twelve (12 months[.]"[1238] ● Paragraph 424 wrongly suggests that the Order obligates Meta to [redacted] Rather, the relevant provision of the Order—Part VII.E.1.c—requires Meta to "[d]esign, implement, maintain, and document safeguards" that "with respect to any Covered Third Party that obtains or otherwise has access to Covered Information from [Meta] for use in an independent, third-party consumer application or website, . . . shall include . . . [m]onitoring Covered Third Party compliance with [Meta]'s Platform Terms through measures including, but not limited to, ongoing manual reviews and automated scans, and regular assessments, audits, or other technical and operational testing at least once every twelve (12) months[.]"[1239] Paragraph 424 appears to be referring to [redacted]

[1238] Order, Part VII.E.

[1239] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[432] Ex. 6 at 40-43 (Nov. 19, 2021 resp. to Sept 22, 2021 request 3). [433] Ex. 6 at 40-43 (Nov. 19, 2021 resp. to Sept 22, 2021 request 3). [434] Ex. 4 at 151.	[redacted] and mischaracterizes this obligation in a number of ways.[1240] For instance: nowhere in Part VII.E.1.c does the term [redacted]; the provision does not require any activities that [redacted] and the Commission's description ignores the Order's inclusion of the term [redacted] When stated correctly, Meta meets its Part VII.E.1.c obligations through safeguards and processes as outlined in Section IV.D, Resp. to PFOF ¶¶ 375–91, *supra*. ● They wrongly suggest that Meta did not, or does not now, operate safeguards that satisfy Part VII.E.1.c's obligation regarding "regular assessments, audits, or other technical and operational testing at least once every twelve (12) months." At the time of the initial Assessment, Meta maintained—and continues to maintain—[redacted][1241] [redacted]

[1240] *See id*.

[1241] *See* Ex. 4 (2021 Assessment Report) at 151; *see also* Ex. D (2023 Assessment Report) at 168–70.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1242] [redacted] [1243] [redacted] [1244] [redacted] [1245] Following the initial Assessment period, Meta expanded its relevant safeguards considerably. For example and among other things, [redacted] [1246] [redacted]

[1242] Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 3) at 40–43.

[1243] *Id.*

[1244] *Id.*

[1245] *Id.* at 43.

[1246] *Id.* at 38–40.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1247] ● They fail to sufficiently clarify that the Assessor observed that Meta's [redacted][1248] [redacted][1249] ● They fail to mention that the Assessor found that the various remediations that Meta implemented following the initial Assessment period satisfactorily resolved the concerns the Assessor voiced regarding Meta's [redacted] as they existed during the initial six-month Assessment period. The Assessor previewed these remediations in its initial Assessment Report,[1250] and has confirmed that they were implemented.[1251] ● They fail to acknowledge that the Assessor briefed the FTC on Meta's TPRM domain [redacted]"[1252]

[1247] *Id.* at 38.

[1248] Ex. 4 (2021 Assessment Report) at 150–53.

[1249] *Id.*

[1250] *Id.* at 153.

[1251] Ex. D (2023 Assessment Report) at 184 [redacted].

[1252] Ex. B (May 3, 2023 Assessor Presentation to FTC) at 6.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	• They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] as reflected in the initial Assessment Report described herein.[1253]
Paragraphs 430–32 430. One of Facebook's safeguards provided that it ran automated scans to detect whether a Covered Third Party provided a functioning link to its privacy policy.[435] 431. [redacted].[436] 432. [redacted].[437] [435] Ex. 4 at 15; Ex. 5 at 26 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 1). [436] Ex. 4 at 15; Ex. 5 at 26 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 1). [437] Ex. 4 at 153; Ex. 5 at 26–27 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 1).	**Paragraphs 430–32** purport to describe certain Assessor observations about the [redacted] safeguard as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: • Nothing in Part VII.E of the Order required Meta to implement automated safeguards to control for the material internal and external risks identified in response to Part VII.D. In implementing [redacted] Meta affirmatively chose to implement a safeguard beyond those specifically required by the Order. • They fail to clarify that [redacted].[1254] • They fail to include key details regarding the rationale for Meta's [redacted]

[1253] *See* Ex. 4 (2021 Assessment Report) at 150–53.

[1254] Ex. 5 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 1) at 27; *see also* Ex. D (2023 Assessment Report) at 184–94.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1255] ● They fail to include key details regarding compensating controls that existed [redacted][1256][redacted][1257] ● They fail to include details regarding processes Meta has implemented since the initial Assessment period [redacted]

[1255] Ex. 5 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 1) at 26–28.

[1256] *Id.*

[1257] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1258] [redacted] [redacted][1259] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observation regarding [redacted][1260]
Paragraphs 433–34 433. [redacted].[438] 434. [redacted].[439] [438] Ex. 4 at 153; Ex. 5 at 26–27 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 1). [439] Ex. 5 at 26–27 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 1).	**Paragraphs 433–34** purport to describe certain Assessor observations about Meta's [redacted] following the initial Assessment period. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to implement any [redacted] ● They fail to include key details

[1258] *See* Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 3) at 38.

[1259] *Id.* at 39–40.

[1260] *See* Ex. 4 (2021 Assessment Report) at 153.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	regarding processes Meta has implemented since the initial Assessment period to [redacted] For example, among other things, Meta has enhanced the [redacted].[1261] ● They suggest that Meta [redacted][1262] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] during the initial Assessment period

[1261] Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 3) at 39–40; *see also* Ex. D (2023 Assessment Report) at 185 [redacted].

[1262] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	described herein.[1263]
Paragraphs 435–49 435. The Assessor found that [redacted].[440] 436. [redacted].[441] 437. The Assessor observed that [redacted].[442] 438. For instance, [redacted].[443] 439. [redacted].[444]	**Paragraphs 435–49** purport to describe certain Assessor observations about the [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to develop a [redacted] or required it to complete any [redacted] ● Paragraph 436 incorrectly states that Meta [redacted][1264]

[1263] *See* Ex. 4 (2021 Assessment Report) at 153.

[1264] Ex. 5 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 5) at 42.

Preliminary Findings of Fact (PFOF)	Response to PFOF
440. [redacted].[445] 441. At the time of the assessment, [redacted].[446] 442. [redacted].[447] 443. [redacted]	[redacted] [1265] [1266] [1267] [1268]

[1265] Ex. 5 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 6) at 11.

[1266] *Id.*

[1267] *Id.*

[1268] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted].[448] 444. Approximately [redacted] apps that were supposed to have completed App Re-Review by October 24, 2021 remained incomplete as of October 25, 2021.[449] 445. Of the [redacted] apps that were supposed to have completed App Re-Review by October 24, 2021 and remained incomplete as of October 25, 2021, [redacted] had advanced permissions to access nonpublic user information.[450] 446. By November 29, 2021, Facebook completed App Re-Reviews for [redacted] of the [redacted] overdue apps.[451] 447. Of the group of [redacted] overdue apps, [redacted] were in violation of Platform Terms or developer policies, [redacted] of which had advanced permissions to access nonpublic user information.[452] 448. As of November 29, 2021, Facebook had taken enforcement action resulting in suspension or termination of access to one or more categories of Covered Information against [redacted] of the [redacted] overdue apps after October 24, 2021, and [redacted] lost access to Covered Information in the period between October 24, 2021, and the delayed completion of their App Re-	[redacted][1269] [redacted][1270] [redacted][1271] [redacted][1272] ● Paragraph 435 claims the Assessor observed that Meta [redacted]

[1269] *Id.*

[1270] *Id.*

[1271] *Id.*

[1272] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
Review.[453] 449. Additionally, as of December 3, 2021, Facebook still had not completed App Re-Review for [redacted] apps, due to technical issues with Facebook's software.[454] [440] Ex. 4 at 150. [441] Ex. 5 at 42 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 5). [442] Ex. 4 at 150. [443] Ex. 4 at 153–54. [444] Ex. 4 at 153–54. [445] Ex. 5 at 42–43 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 5). [446] Ex. 5 at 42–43 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 5). [447] Ex. 5 at 42–43 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 5). [448] Ex. 4 at 153–54. [449] Ex. 5 at 11–12 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 6); Ex. 7 at 15 (Dec. 3, 2021 resp. to Sept. 22, 2021 request 6); Ex. 79 at 152:8–22. [450] Ex. 7 at 15–19 (Dec. 3, 2021 resp. to Sept. 22, 2021 request 6). [451] Ex. 7 at 16–19 (Dec. 3, 2021 resp. to Sept. 22, 2021 request 6). [452] Ex. 7 at 16–19 (Dec. 3, 2021 resp. to Sept. 22, 2021 request 6). [453] Ex. 7 at 16–19 (Dec. 3, 2021 resp. to Sept. 22, 2021 request 6). [454] Ex. 7 at 16–19 (Dec. 3, 2021 resp. to Sept. 22, 2021 request 6).	[redacted][1273] Notably, [redacted] is of Meta's design and not subject to any requirement in the Order. ● They fail to explain key details regarding [redacted][1274] [redacted][1275] [redacted][1276]

[1273] *See* Ex. 4 (2021 Assessment Report) at 150.

[1274] Ex. 5 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 6) at 11.

[1275] *Id.*

[1276] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1277] • They fail to appropriately convey the [redacted][1278] [redacted][1279] [redacted][1280] [redacted][1281] • They fail to provide key details known to the Commission regarding Meta's remediation efforts to address [redacted] period, Meta implemented robust processes to address these

[1277] *See* Ex. 7 (Dec. 3, 2021 resp. to Sept. 22. 2021 request 6) at 15–16; *see also* Ex. D (2023 Assessment Report) at 185.

[1278] Ex. 5 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 6) at 11–12.

[1279] *See id.* at 11.

[1280] *Id.* at 12.

[1281] Ex. 7 (Dec. 3, 2021 resp. to Sept. 22. 2021 request 6) at 15.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	challenges.[1282] First, Meta implemented solutions so that the [redacted][1283] [redacted][1284] Second, [redacted][1285] [redacted][1286] [redacted][1287] [redacted]

[1282] Ex. 5 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 5) at 43.

[1283] *Id*.

[1284] *Id*.

[1285] *Id.*

[1286] *Id.*

[1287] *Id.* at 44.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1288] ● They fail to mention that the Assessor found that Meta's enhancements which were previewed to the Commission during the Part XV process)[1289] [redacted] remediated the issues the Assessor had identified with the process as it existed during the initial six-month Assessment period.[1290] ● They fail to sufficiently clarify that neither the Commission nor the Assessor has suggested that Meta did not [redacted][1291] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations being described herein.[1292]
Paragraphs 450–60 450. Facebook uses the concept of rate-limiting as a preventive control that inhibits third-party apps from reaching a defined limit for the number of calls to an API in a given period.[455]	**Paragraphs 450–60** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did

[1288] *Id.*

[1289] *Id.* at 43–44.

[1290] Ex. D (2023 Assessment Report) at 185 [redacted]; *See also* Ex. 5 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 5) at 43–44.

[1291] *See* Ex. 7 (Dec. 3, 2021 resp. to Sept. 22, 2021 request 6) at 15–16; *see also* Ex. D (2023 Assessment Report) at 185.

[1292] *See* Ex. 4 (2021 Assessment Report) at 153–54.

Preliminary Findings of Fact (PFOF)	Response to PFOF
451. Rate limits exist across APIs and are set based on the nature of the API and the nature of the app accessing it. Facebook sets automated levels at which, when an app reaches that level, its access is cut off for the period, and its ability to call that API is cut off for that period.[456] 452. [redacted].[457] 453. [redacted].[458] 454. Following a defined [redacted]" (i.e., the time during which Facebook rejects all API requests), the app may once again receive data.[459] 455. [redacted].[460] 456. [redacted]	not meet Part VII's requirements because: ● Nothing in Part VII.E.1 of the Order required Meta to develop or implement [redacted], Meta affirmatively chose to implement a safeguard beyond what is specifically required by the Order. Part VII.E.1 does not mention [redacted], let alone a pretext to enforce on an E.1 Covered Third Party. ● Paragraph 455 fails to note [redacted].[1293] [redacted].[1294] ● They fail to note that [redacted]

[1293] Ex. 5 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 6) at 12.

[1294] *See id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][461]. 457. [redacted][462]. 458. The Assessor noted that, [redacted][463]. 459. Facebook stated that [redacted][464]. 460. At the December 17, 2021, Rule 30(b)(6) deposition regarding Third Party Risk Management, Facebook's corporate designee testified that, [redacted][465]. [455] Ex. 79 at 170:13–20.	[redacted][1295] ● They omit key details regarding Meta's rationale for [redacted] In Meta's Part XV responses and as noted by Meta's corporate designee, [redacted][1296] [redacted][1297] [redacted][1298]. ● They omit key portions of the testimony of Meta's corporate designee, who explained: [redacted]

[1295] Ex. 5 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 11) at 47.

[1296] Ex. 5 (Oct. 29, 2021 resp. to Sept. 1, 2021 requests 8–10) at 45–46; Ex. 79 (M. Protti Dep.) at 171:12–72:7.

[1297] *Id.*

[1298] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[456] Ex. 79 at 170:21–171:4. [457] Ex. 4 at 160; Ex. 5 at 46 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 8). [458] Ex. 4 at 160; Ex[]. 5 at 46 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 8). [459] Ex. 5 at 45–46 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 8); Ex. 79 at 171:5–11. [460] Ex. 5 at 47 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 11). [461] [redacted] Ex. 5 at 46 n.48, 47 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 11). [462] Ex. 5 at 45–46 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 8); Ex. 79 at 171:12–172:7. [463] Ex. 4 at 160. [464] Ex. 5 at 45–46 (Oct. 29, 2021 resp. to Sept. 22, 2021 requests 8, 9, 10 . [465] Ex. 79 at 172:9–17.	[redacted][1299] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations relating to the [redacted][1300]
Paragraph 461 461. Part VII.E.1.d of the Order requires the Company to enforce its Platform Terms based solely on the severity, nature, and impact of the violation; the Covered Third Party's malicious conduct or history of violations; and applicable law.[466] [466] Ex. 3, Part VII.E.1.d.	**Paragraph 461** purports to set forth the scope of Meta's obligations under Part VII.E.1.d of the 2020 Order. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements because: ● It asserts that Part VII.E.1.d of the Order applies to any Covered Third Party; rather, its application is confined to E.1 Covered Third Parties.[1301]
Paragraph 462	**Paragraph 462** purports to describe certain Assessor observations about the [redacted]

[1299] Ex. 79 (M. Protti Dep.) at 171:12–72:7.

[1300] *See* Ex. 4 (2021 Assessment Report) at 160.

[1301] *See* Order, Part VII.E.1.d.

Preliminary Findings of Fact (PFOF)	Response to PFOF
462. The Assessor found [redacted].[467] [467] Ex. 4 at 158.	[redacted] as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII.E.1.d.of the Order required Meta to [redacted] ● It omits key facts regarding Meta's remediation of the Assessor's observation described here. Meta has taken numerous steps to enable Meta to promptly identify and mitigate any [redacted][1302] ○ For one, [redacted][1303][1304]

[1302] Ex. 7 (Dec. 3, 2021 resp. to Sept. 1, 2021 request 4) at 11.

[1303] *Id.*

[1304] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1305][redacted][1306][redacted][1307][redacted][1308] ○ Meta has also [redacted][1309]

[1305] *Id.*

[1306] *Id.*

[1307] *Id.*

[1308] *Id.*

[1309] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1310] ○ [redacted][1311] [redacted][1312] [redacted][1313] ● They fail to acknowledge that neither the Commission nor the Assessor has identified any harm or impact on users related to the Assessor's regarding [redacted] as reflected in the initial Assessment Report described

[1310] *Id.*

[1311] *Id.*

[1312] *See* Ex. D (2023 Assessment Report) at 186.

[1313] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	herein.[1314]
Paragraphs 463–68 463. [redacted][468] 464. During the assessment period, Facebook's Enforcement Rubric [redacted].[469] 465. During the assessment period, Facebook's Enforcement Rubric [redacted][470] 466. The Assessor concluded [redacted][471] 467. Facebook stated that, [redacted]	**Paragraphs 463–68** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII.E.1.d. of the Order required Meta [redacted] In implementing [redacted][1315] Meta affirmatively chose to implement safeguards beyond those specifically required by the Order. ● They omit key details regarding Meta's remediation of the Assessor's observation described here, as discussed in Section IV.D, Resp. to PFOF ¶¶ 462, *supra*. Most directly, [redacted][1316]

[1314] *See* Ex. 4 (2021 Assessment Report) at 158.

[1315] Ex. 7 (Dec. 3, 2021 resp. to Sept. 1, 2021 request 4) at 11.

[1316] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted]"[472] 468. Facebook stated that [redacted].[473] [468] Ex. 79 at 163:19–164:4. [469] Ex. 4 at 158; Ex. 5 at 28 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 1); Ex. 7 at 8–11 (Dec. 3, 2021 resp. to Sept. 1, 2021 request 4); Ex. 79 at 164:12–165:8. [470] Ex. 79 at 164:12–165:8. [471] Ex. 4 at 158. [472] Ex. 4 at 158; Ex. 5 at 28 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 1); Ex. 7 at 8–11 (Dec. 3, 2021 resp. to Sept. 1, 2021 request 4). [473] Ex. 4 at 158; Ex. 5 at 28 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 1); Ex. 7 at 8–11 (Dec. 3, 2021 resp. to Sept. 1, 2021 request 4).	• They fail to acknowledge that neither the Commission nor the Assessor has identified any harm or impact on users related to the Assessor's regarding [redacted] as reflected in the initial Assessment Report described herein.[1317]
Paragraphs 469–75 469. During the assessment, [redacted].[474] 470. [redacted].[475] 471. [redacted]	**Paragraphs 469–75** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: • Nothing in Part VII of the Order required Meta to implement a [redacted]

[1317] *See* Ex. 4 (2021 Assessment Report) at 158.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted] [476].	[redacted]
472. [redacted] [477]	• Paragraphs 469 to 475 falsely imply that Meta instituted [redacted] [1318]
473. [redacted] [478].	• The Commission's preliminary factual findings are also incomplete and therefore inaccurate insofar as Paragraph 473 [redacted] [1319]. [redacted] [1320]
474. [redacted] [479].	
475. [redacted] [480].	

[1318] *See* Ex. 4 (2021 Assessment Report) at 158; *see also* Ex. 5 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 5) at 29.

[1319] Ex. 5 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 5) at 29.

[1320] *Id.* at 29–30.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[474] Ex. 4 at 158; Ex. 5 at 28 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 1); Ex. 7 at 8–11 (Dec. 3, 2021 resp. to Sept. 1, 2021 request 4). [475] Ex. 4 at 158; Ex. 5 at 28 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 1); Ex. 7 at 8–11 (Dec. 3, 2021 resp. to Sept. 1, 2021 request 4). [476] Ex. 4 at 158. [477] Ex. 5 at 29–30 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 5); Ex. 7 at 11–12 (Dec. 3, 2021 resp. to Sept. 1, 2021 request 6). [478] Ex. 4 at 158; Ex. 5 at 29 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 5). [479] Ex. 4 at 158; Ex. 5 at 29 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 5). [480] Ex. 7 at 8–11 (Dec. 3, 2021 resp. to Sept. 1, 2021 request 4).	• Paragraph 474 incorrectly states that [redacted][1321][redacted][1322][redacted][1323] • They fail to set forth facts available to the Commission about the numerous steps Meta has taken to address [redacted][1324]

[1321] *See id.* at 29.

[1322] *Id.*

[1323] *Id.*

[1324] *See* Ex. 7 (Dec. 3, 2021 resp. to Sept. 1, 2021 request 5) at 11.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1325] [redacted][1326] [redacted][1327] [redacted][1328] [redacted][1329] [redacted]

[1325] *See id.*

[1326] *Id.*

[1327] *Id.*

[1328] *Id.*

[1329] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1330] [redacted][1331] [redacted][1332] [redacted][1333] ● Paragraph 475 fails to mention that [redacted][1334] Additionally, Paragraph 475 fails to mention that [redacted][1335] Lastly, Paragraph 475 fails to mention that [redacted]

[1330] Ex. 5 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 5) at 29.

[1331] Ex. 7 (Dec. 3, 2021 resp. to Sept. 1, 2021 request 4) at 11.

[1332] *Id*.

[1333] *Id*.

[1334] *See* Ex. 7 Dec. 3, 2021 resp. to Sept. 1, 2021 request 4) at 9.

[1335] *Id*. at 10.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1336][redacted][1337][redacted][1338] • They fail to acknowledge that neither the Commission nor the Assessor has identified any harm or impact on users related to the Assessor's observation described herein.
Paragraphs 476–90 476. [redacted][481] 477. [redacted][482] 478. [redacted]	**Paragraphs 476–90** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: • Nothing in Part VII of the Order imposed any [redacted] • Paragraphs 485–86 incorrectly state that [redacted]

[1336] *Id*.

[1337] *Id*. at 11.

[1338] *Id*.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted] [483].	[redacted] as the Assessor observed, [redacted] [1339]
479. [redacted] [484].	• Paragraph 489 states that Meta [redacted] [1340] [redacted] [1341]
480. [redacted] [485].	• They fail to acknowledge that neither the Commission nor the Assessor has identified any harm or impact on users related to the Assessor's observation described herein.
481. [redacted] [486].	
482. [redacted] [487].	
483. [redacted]	

[1339] Ex. 4 (2021 Assessment Report) at 110.

[1340] Ex. 6 (Nov. 19, 2021 resp. to Sept. 16, 2021 request 1) at 35 (emphasis added).

[1341] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted].[488] 484. [redacted].[489] 485. During testing, the Assessor [redacted].[490] 486. [redacted].[491] 487. Facebook explained [redacted].[492] 488. In the course of responding to the FTC's requests, Facebook [redacted].[493] 489. [redacted].[494] 490. In response to the FTC's requests, Facebook [redacted]	

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted]. [495] [481] Ex. 4 at 102–04. [482] Ex. 4 at 102–04. [483] Ex. 4 at 102–04. [484] Ex. 6 at 33–35 (Nov. 19, 2021 resp. to Sept. 16, 2021 request 1). [485] Ex. 6 at 33–35 (Nov. 19, 2021 resp. to Sept. 16, 2021 request 1). [486] Ex. 6 at 33–35 (Nov. 19, 2021 resp. to Sept. 16, 2021 request 1). [487] Ex. 6 at 33–35 (Nov. 19, 2021 resp. to Sept. 16, 2021 request 1)[.] [488] Ex. 6 at 33–35 (Nov. 19, 2021 resp. to Sept. 16, 2021 request 1)[.] [489] Ex. 4 at 110; Ex. 6 at 33–35 (Nov. 19, 2021 resp. to Sept. 16, 2021 request 1). [490] Ex. 4 at 110; Ex. 6 at 33–35 (Nov. 19, 2021 resp. to Sept. 16, 2021 request 1). [491] Ex. 4 at 110; Ex. 6 at 33–35 (Nov. 19, 2021 resp. to Sept. 16, 2021 request 1). [492] Ex. 6 at 33–35 (Nov. 19, 2021 resp. to Sept. 16, 2021 request 1); Ex. 7 at 20–21 (Dec. 3, 2021 resp. to Nov. 23, 2021 request 2). [493] Ex. 6 at 33–35 (Nov. 19, 2021 resp. to Sept. 16, 2021 request 1); Ex. 7 at 20–21 (Dec. 3, 2021 resp. to Nov. 23, 2021 request 2). [494] Ex. 6 at 33–35 (Nov. 19, 2021 resp. to Sept. 16, 2021 request 1); Ex. 7 at 20–21 (Dec. 3, 2021 resp. to Nov. 23, 2021 request 2). [495] Ex. 6 at 33–35 (Nov. 19, 2021 resp. to Sept. 16, 2021 request 1).	
Paragraphs 491–92 491. More broadly, the Assessor found, [redacted]	**Paragraphs 491–92** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because:

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted].[496] 492. During its testing, for example, the Assessor found [redacted].[497] [496] Ex. 4 at 157. [497] Ex. 4 at 157–58.	• Nothing in Part VII of the Order required Meta to have particular processes or controls to [redacted] • They omit the fact that Meta has implemented remediation measures for [redacted][1342] These measures were outlined for the Commission when Meta noted that [redacted][1343] [redacted][1344] • They fail to acknowledge that neither the Commission nor the Assessor has identified any harm or impact on users related to the Assessor's observation described herein.[1345]

[1342] *See* Ex. D (2023 Assessment Report) at 185.

[1343] *See* Ex. 5 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 7) at 44.

[1344] *See* Ex. D (2023 Assessment Report) at 185.

[1345] Ex. 4 (2021 Assessment Report) at 157–58.

Preliminary Findings of Fact (PFOF)	Response to PFOF
Paragraphs 493–98 493. [redacted].[498] 494. Only after the assessment did Facebook begin taking additional steps to address [redacted] and develop [redacted].[499] 495. [redacted].[500] 496. [redacted].[501] 497. Facebook also reported [redacted].[502] 498. For example, [redacted]	**Paragraphs 493–98** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order imposed any [redacted] ● They fail to mention that the Assessor has found that the remediation that Meta implemented following the initial Assessment period satisfactorily resolved [redacted] The Assessor has confirmed that [redacted].[1346] [redacted].[1347] ● They fail to acknowledge that neither

[1346] Ex. D (2023 Assessment Report) at 186.

[1347] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted].[503] [498] Ex. 79 at 167:2–168:2. [499] Ex. 5 at 29 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 1); Ex. 79 at 167:20–168:25. [500] Ex. 5 at 29 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 1). [501] Ex. 7 at 8–11 (Dec. 3, 2021 resp. to Sept. 1, 2021, request 4). [502] Ex. 7 at 8–11 (Dec. 3, 2021 resp. to Sept. 1, 2021, request 4). [503] Ex. 5 at 29–30 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 5).	the Commission nor the Assessor has identified any harm or impact on users related to the Assessor's observation described herein.
Paragraphs 499–503 499. The Assessor identified [redacted].[504] 500. Oculus produces consumer-focused virtual reality (VR) headsets, which have access to the Oculus App Store, where users can download applications such as games, simulators, and other virtual reality experiences.[505] 501. The majority of applications available for use on Oculus are developed and maintained by third-party developers.[506] 502. To support development efforts, Oculus maintains an ecosystem platform solutions where third-party developers can build, test, and distribute VR applications. Oculus also maintains multiple software development kits	**Paragraphs 499–503** purport to set forth details regarding [redacted] as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to ensure that [redacted] ● Paragraph 503 fails to clarify [redacted]

Preliminary Findings of Fact (PFOF)	Response to PFOF
SDKs) and APIs for use by third-party developers.[507] 503. [redacted].[508] [504] Ex. 4 at 154. [505] Ex. 4 at 154. [506] Ex. 4 at 154. [507] Ex. 4 at 154. [508] Ex. 4 at 154.	[redacted][1348] ● They fail to mention that following the initial Assessment period, the Assessor acknowledged that Meta addressed the [redacted][1349] ● They fail to acknowledge that neither the Commission nor the Assessor has identified any harm or impact on users related to the Assessor's observation described herein.[1350]
Paragraphs 504–09 504. [redacted].[509] 505. [redacted].[510] 506. [redacted]	**Paragraphs 504–09** purport to describe certain Assessor observations about [redacted], as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to maintain [redacted]

[1348] Ex. 4 (2021 Assessment Report) at 154.

[1349] Ex. D (2023 Assessment Report) at 185.

[1350] *See* Ex. 4 (2021 Assessment Report) at 154–57.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted].[511] 507. During testing, the Assessor found [redacted].[512] 508. The Assessor reported [redacted].[513] 509. [redacted].[514]	• They fail to mention facts available to the Commission, including that: ○ [redacted][1351] ○ [redacted][1352] [redacted][1353] ○ [redacted]

[509] Ex. 4 at 154.
[510] Ex. 4 at 154.
[511] Ex. 4 at 154.
[512] Ex. 4 at 154.
[513] Ex. 4 at 154.
[514] Ex. 4 at 154–55.

[1351] *Id.* at 155.

[1352] *Id.*

[1353] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1354] ○ [redacted][1355] ● They fail to mention that the Assessor has found that the remediation that Meta implemented following the initial Assessment period satisfactorily resolved [redacted]. Meta addressed this gap by [redacted][1356] ● They fail to acknowledge that neither the Commission nor the Assessor has identified any harm or impact on users related to the Assessor's observation described here. While Paragraph 509 notes that [redacted]

[1354] *Id.*

[1355] *Id.*

[1356] Ex. D (2023 Assessment Report) at 185.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted] there is no allegation of any particular harm or negative impact as a result. [redacted]
Paragraphs 510–18 510. [redacted].[515] 511. [redacted].[516] 512. [redacted].[517] 513. [redacted]	**Paragraphs 510–18** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to [redacted] ● Paragraphs 515–16 fail to mention that [redacted][1357]

[1357] Ex. 4 (2021 Assessment Report) at 156.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][518].	[redacted][1358] • They fail to provide [redacted][1359] • Paragraph 518 fails to mention [redacted][1360][1361] • They fail to mention that the Assessor has found that the remediation that Meta implemented satisfactorily resolved [redacted][1362]
514. [redacted][519].	
515. [redacted][520].	
516. [redacted][521].	
517. [redacted][522].	

[1358] *Id.*

[1359] *Id.*

[1360] *Id.*

[1361] *Id.*

[1362] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
518. [redacted].[523] [515] Ex. 4 at 155. [516] Ex. 4 at 155. [517] Ex. 4 at 155. [518] Ex. 4 at 155. [519] Ex. 4 at 155. [520] Ex. 4 at 155. [521] Ex. 4 at 155. [522] Ex. 4 at 156. [523] Ex. 4 at 156.	[redacted][1363] Specifically, the Assessor acknowledged the fact that Meta [redacted][1364] ● They fail to acknowledge that neither the Commission nor the Assessor has identified any harm or impact on users related to the Assessor's observations described herein.[1365]
Paragraphs 519–23 519. [redacted].[524] 520. [redacted].[525] 521. [redacted]	**Paragraphs 519–23** purport to describe certain Assessor observations [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to [redacted] ● Paragraph 523 fails to mention that Meta [redacted]

[1363] *Id.*

[1364] Ex. D (2023 Assessment Report) at 185.

[1365] *See* Ex. 4 (2021 Assessment Report) at 155–56.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted].[526] 522. [redacted].[527] 523. The Assessor observed that [redacted].[528] [524] Ex. 4 at 156. [525] Ex. 4 at 156. [526] Ex. 4 at 156. [527] Ex. 4 at 156. [528] Ex. 4 at 156.	[redacted].[1366] [redacted].[1367] ● They fail to mention that the Assessor has found that the remediation that Meta implemented following the initial Assessment period satisfactorily resolved [redacted] as they existed during the initial six-month Assessment period. Meta addressed this gap [redacted].[1368] ● They fail to acknowledge that neither the Commission nor the Assessor has identified any harm or impact on users related to the Assessor's observation

[1366] *Id*. at 156.

[1367] *Id*. at 157.

[1368] Ex. D (2023 Assessment Report) at 185.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	described herein.[1369]
Paragraph 524–28 524. [redacted].[529] 525. During testing, the Assessor noted that, [redacted].[530] 526. The Assessor independently tested [redacted].[531] 527. The Assessor reported that, [redacted].[532]	**Paragraphs 524–28** purport to describe certain Assessor observations about Meta's processes to [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to [redacted] ● Paragraph 527 omits the fact that [redacted].[1370] ● Paragraph 528 omits the fact that Meta addressed this gap by [redacted]

[1369] Ex. 4 (2021 Assessment Report) at 156.

[1370] *Id*. at 157.

Preliminary Findings of Fact (PFOF)	Response to PFOF
528. [redacted].[533] [529] Ex. 4 at 157. [530] Ex. 4 at 157. [531] Ex. 4 at 157. [532] Ex. 4 at 157. [533] Ex. 4 at 157.	[redacted][1371] ● They fail to acknowledge that neither the Commission nor the Assessor has identified any harm or impact on users related to the Assessor's observation described herein.[1372]
Paragraphs 529–32 529. Facebook maintains a number of automated safeguards, which are technical systems that largely function without ongoing human involvement. These safeguards serve a wide range of functions and are designed to operate on an automated basis without routine human intervention.[534] 530. The Assessor found that [redacted].[535] 531. The Assessor observed that, [redacted]	**Paragraphs 529–32** purport to set forth details about Meta's automated safeguards as they existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to have particular processes or controls to [redacted] ● They omit the fact that Meta has implemented remediation measures for [redacted][1373]

[1371] Ex. D (2023 Assessment Report) at 185.

[1372] Ex. 4 (2021 Assessment Report) at 157.

[1373] *See* Ex. D (2023 Assessment Report) at 185.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted].[536] 532. During operating effectiveness testing, the Assessor found [redacted].[537] [534] Ex. 5 at 44 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 7). [535] Ex. 4 at 157. [536] Ex. 4 at 157. [537] Ex. 4 at 157–58.	• They fail to acknowledge that neither the Commission nor the Assessor has identified any harm or impact on users related to the Assessor's observation described herein.[1374]
Paragraphs 533–38 533. For example, [redacted].[538] 534. The Assessor noted [redacted].[539]	**Paragraphs 533–38** purport to describe certain Assessor observations about Meta's [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: • Nothing in Part VII of the Order required Meta to [redacted]

[1374] *See* Ex. 4 (2021 Assessment Report) at 157–58.

Preliminary Findings of Fact (PFOF)	Response to PFOF
535. [redacted].[540] 536. The Assessor observed that [redacted].[541] 537. In response to the Assessor's observation, Facebook stated [redacted].[542] 538. Facebook further stated [redacted].[543] [538] Ex. 4 at 159. [539] Ex. 4 at 160. [540] Ex. 4 at 160. [541] Ex. 4 at 160. [542] Ex. 4 at 160. [543] Ex. 4 at 160. The Assessor noted it will validate Facebook's remediation as part of a future assessment.	• They fail to mention information available to the Commission that the Assessor has found that the remediation that Meta implemented following the initial Assessment period satisfactorily resolved [redacted].[1375] • They fail to acknowledge that neither the Commission nor the Assessor has identified any harm or impact on users related to the Assessor's observation described herein.[1376]
Paragraphs 539–41	**Paragraphs 539–41** purport to describe certain Assessor observations [redacted]

[1375] *See* Ex. 4 (2021 Assessment Report) at 160; *see also* Ex. D (2023 Assessment Report) at 184.

[1376] *See* Ex. 4 (2021 Assessment Report) at 159–60.

Preliminary Findings of Fact (PFOF)	Response to PFOF
539. The Assessor observed that [redacted][544] 540. [redacted][545] 541. [redacted][546] [544] Ex. 4 at 158. [545] Ex. 5 at 44 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 7). [546] Ex. 5 at 44–45 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 7).	[redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to implement any particular measures to [redacted] ● They imply that Meta [redacted] rather, as Meta has explained to the Commission, as a result of a thoughtful and privacy-protective process, Meta intentionally [redacted][1377] Meta's [redacted]

[1377] Ex. 5 (Oct. 29, 2021 resp. to Sept. 22, 2021 request 7) at 44.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1378] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted][1379] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][548] 544. [redacted][549] 545. The Assessor observed that, [redacted][550] 546. The Assessor concluded [redacted][551] 547. [redacted][552] 548. [redacted]	[redacted] ● They fail to clarify that Meta did not identify [redacted][1382] ● They fail to acknowledge that neither the Commission nor the Assessor has identified any harm or impact on users related to the Assessor's observation described herein.

[1382] Ex. 10 (Oct. 15, 2022 resp. to Sept. 1, 2021 request 8) at 6; *see also* Ex. D (2023 Assessment Report) at 184.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][553] 549. [redacted][554] 550. [redacted][555] 551. Facebook further reported [redacted][556] 552. Facebook reported that, [redacted][557] [547] Ex. 4 at 158. [548] Ex. 4. at 158–59. [549] Ex. 4. at 159. [550] Ex. 4. at 159. [551] Ex. 4 at 159. [552] Ex. 10 at 4–6 (Oct. 15, 2021 resp. to Sept. 1, 2021 request 8).	

Preliminary Findings of Fact (PFOF)	Response to PFOF
[553] Ex. 10 at 4–6 (Oct. 15, 2021 resp. to Sept. 1, 2021 request 8). [554] Ex. 10 at 4–6 (Oct. 15, 2021 resp. to Sept. 1, 2021 request 8). [555] Ex. 10 at 4–6 (Oct. 15, 2021 resp. to Sept. 1, 2021 request 8). [556] Ex. 10 at 4–6 (Oct. 15, 2021 resp. to Sept. 1, 2021 request 8). [557] Ex. 10 at 4–6 (Oct. 15, 2021 resp. to Sept. 1, 2021 request 8).	
Paragraphs 553–57 553. The Assessor observed that, [redacted] [558] 554. In response to the Assessor's request for information during testing, Facebook [redacted] [559] 555. At the time of testing, [redacted] [560] 556. [redacted] [561]	**Paragraphs 553–57** purport to describe certain Assessor observations about Meta's [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to have processes in place for [redacted] ● Paragraph 553 incorrectly suggests that Meta's obligations under Part XIV.B of the Order [redacted] when they apply only to E.1 products.[1383] ● Paragraph 557 fails to mention that the Assessor has found that the remediation that Meta implemented following the initial Assessment period satisfactorily resolved [redacted]

[1383] *See* Order, Part XIV.B (stating Part XIV.B applies to records Meta "provides or makes available to any Covered Third Party that is subject to the requirements of Part VII.E.1.)

Preliminary Findings of Fact (PFOF)	Response to PFOF
557. [redacted][562] [558] Ex. 4 at 161. [559] Ex. 4 at 161. [560] Ex. 4 at 161. [561] Ex. 4 at 161. [562] Ex. 4 at 161.	[redacted] The Assessor previewed these remediations in its initial Assessment Report and has confirmed that Meta [redacted][1384] ● They fail to acknowledge that neither the Commission nor the Assessor has identified any harm or impact on users related to the Assessor's observation described herein.[1385]
Paragraphs 558–73	**Paragraphs 558–73** purport to describe Meta's practices related to Meta's [redacted] as they existed during the initial six-month Assessment ("initial Assessment"). These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta [redacted] ● They omit the relevant context that the Assessor's observations in the initial Assessment regarding [redacted]

[1384] *See* Ex. 4 (2021 Assessment Report) at 161.

[1385] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1386] As the Assessor recognized in the initial Assessment, Meta's [redacted][1387] The Assessor itself recognized that the observations [redacted][1388]
Paragraphs 558–61 558. [redacted]	**Paragraphs 558–61** purport to describe the function of and terms and conditions relating to the Meta Pixel and SDK. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because:

[1386] [redacted] *See* Ex. D (2023 Assessment Report) at 347. [redacted] Meta chose to implement controls and procedures beyond those specifically required by Part VII of the Order.

[1387] *See* Ex. 4 (2021 Assessment Report) at 134.

[1388] *See* Ex. 4 (2021 Assessment Report) at 161.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][563] 559. [redacted][564] 560. [redacted][565] 561. [redacted][566] [563] Ex. 4 at 161. [564] Ex. 4 at 161.	• They mischaracterize the function of the Meta Pixel and SDK [redacted][1389] The Meta Pixel and SDK are Meta Business Tools that allow third-party app and website developers to create and send "Events" that log certain actions that people take on the apps and websites that the developer chooses to track.[1390] • They inaccurately state that Meta allows [redacted] Meta does not allow [redacted][1391] These paragraphs are also inaccurate insofar as they omit relevant context that both [redacted] • They omit relevant context that Meta's terms and policies that govern third-party developers' use of the Meta Pixel and SDK, and the other Meta Business Tools, [redacted]

[1389] [redacted] is not a term that is used by Meta.

[1390] *See, e.g.*, https://www.facebook.com/business/help/742478679120153 (Meta Business Help Center article titled "About Meta Pixel") ("Once you've set up the Meta Pixel, the pixel will log when someone takes an action on your website . . . [t]he pixel receives these actions, or events, which you can view on your Meta Pixel page in Events Manager."); https://www.facebook.com/business/help/235457266642587 (Meta Business Help Center article titled "About app events") ("App events are the actions people take while using your app."; explaining options to set up App events "[a]fter you install the Facebook SDK").

[1391] *See, e.g.*, https://www.facebook.com/business/help/182371508761821 (Meta Business Help Center article titled "About detailed targeting") (discussing ad targeting options that "that allow[] you to refine the *group of people* [Meta] show[s] your ads to") (emphasis added).

Preliminary Findings of Fact (PFOF)	Response to PFOF
[565] Ex. 4 at 162. [566] Ex. 4 at 162.	[redacted][1392] In addition, the Meta Business Tools Terms require that third party app and website developers that use the Meta Business Tools, among other things: (1) refrain from sending Meta any "sensitive information," including but not limited to personal health and financial information about their users; (2) provide to their users "robust and sufficiently prominent notice regarding the . . . collection, sharing and usage" of data via the Meta Business Tools; and (3) explain how and where users can opt out of the collection and sharing of their information through the Meta Business Tools for ad targeting purposes.[1393] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding the function of

[1392] *See* Ex. D (2023 Assessment Report) at 347.

[1393] *See* Ex. 5 (Oct. 29, 2021 Response to Sept. 1, 2021 Request 14) at 34; Ex. 84 at 1 (Jul. 14, 2022 Response to June 30, 2022 Request 1).

Preliminary Findings of Fact (PFOF)	Response to PFOF
	and terms and conditions relating to the Meta Pixel or SDK.[1394]
Paragraphs 562–68 562. The Assessor observed [redacted] [567] 563. [redacted] [568] 564. Facebook is working to prevent the storage of sensitive health and financial data received from third-party apps and websites by using Facebook's [redacted] to identify and filter out potentially sensitive information, including health data and certain financial data, and remove that potentially sensitive data before it can be stored and used in Facebook's advertising systems.[569] 565. Facebook provided the Assessor with statistics that [redacted] [570] 566. The Assessor noted that [redacted]	**Paragraphs 562–68** purport to describe Meta's [redacted] and their efficacy at detecting and filtering out potentially sensitive health and financial data from third-party apps and websites, as they existed during the initial Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to develop a system to detect and filter potentially sensitive health and financial data from third-party apps and websites. In adopting a system to detect and filter out data sent by third-party developers via the Meta Pixel and SDK classified as potentially sensitive data before it is stored in Meta's advertising systems, Meta chose to implement controls and procedures beyond those specifically required by the Order. ● Paragraph 563 implies that Meta [redacted] Meta designed its [redacted] to detect and filter out even potentially sensitive data and make no determination that the term was sensitive and/or in violation of Meta's

[1394] *See* Ex. 4 (2021 Assessment Report) at 161–62.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][571] 567. The Assessor noted that [redacted][572] 568. In addition to Facebook's [redacted] Facebook is working on other measures to prevent the storage of potentially sensitive data sent by third parties via Facebook's Pixel and SDK. These other measures include measures to educate third parties about their contractual obligations not to send sensitive data to Facebook via the Facebook Business Tools (which include Pixel and SDK), inform third parties when Facebook identifies and removes potentially violating data that was sent to Facebook, and implement technical means designed to prevent potentially sensitive data from being used in Facebook's advertising systems.[573]	terms. Accordingly, the *potentially* sensitive health and financial data that Meta's [redacted] detect may not be *actually* sensitive, and the developer may not be violating Meta's terms by sending it.[1395] ● They omit relevant context from the initial Assessment, including the Assessor's statement that [redacted][1396] ● They omit that Meta discloses to users that it receives data from third-party developers that use the Meta Business Tools (including the Meta Pixel and SDK) and how Meta may use data sent via the Meta Pixel and SDK, and the other Meta Business Tools, and that Meta provides ways for users to access and control such data. Meta's Privacy Policy discloses how Meta uses data sent by third-party developers, including by providing measurement, analytics, and other business services.[1397] Meta's Privacy Policy links directly to Meta's Off-Facebook Activity Tool (now known as Off Meta Technologies) (also accessible via other entry points), which allows users to view a summary of information Meta has received about their activity from developers via the Meta Business Tools and to disconnect the off-Meta activity that has been associated with their Meta

[1395] *See* Ex. 5 (Oct. 29, 2021 Response to Sept. 1, 2021 Request 14) at 41; Ex. 84 (Jul. 14, 2022 Response to June 30, 2022 Request 6,7) at 9.

[1396] *See* Ex. 4 (2021 Assessment Report) at 162.

[1397] *See* Privacy Policy (effective December 27, 2023), https://mbasic.facebook.com/privacy/policy.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[567] Ex. 4 at 162. [568] Ex. 4 at 162. [569] Ex. 4 at 162; Ex. 5 at 35 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 14). [570] Ex. 4 at 162. [571] Ex. 4 at 162. [572] Ex. 4 at 162. [573] Ex. 5 at 34 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 14).	account, subject to some exceptions for security and safety needs.[1398] [1399] Meta also provides other privacy tools and resources to users related to how data sent via the Meta Business Tools can be controlled in relation to their advertising experiences.[1400] For example, the "Activity Information From Ad Partners" tool allows users to choose whether data that third-party developers share with Meta about their activities on other websites and apps, as well as certain offline interactions, can be used to show them personalized advertisements.[1401] ● They inaccurately describe the types of information sent via the Meta Pixel and SDK that Meta's [redacted] are designed to detect and filter out as "health data and certain financial data." Meta's [redacted] are designed to filter out the data they detect that is sent via the Meta Pixel, SDK, and other Meta Business Tools, that Meta's systems classify as *potentially* sensitive health data, *potentially* sensitive financial data, or *potential* personally identifiable information that is not

[1398] *See* Meta, "Off-Facebook Activity," https://www.facebook.com/off-facebook-activity; Facebook Help Center, "Review your activity off Meta technologies," https://www.facebook.com/help/2207256696182627. Users can also access the Download Your Information tool to view more specific information about the data that Meta receives from apps and websites. *See* Facebook Help Center, "Download a copy of your information on Facebook," https://www.facebook.com/help/212802592074644.

[1399] *See* Ex. 85 (Jul. 29, 2023 Response to June 30, 2022 Request 2) at 3–4.

[1400] *See* Ex. 5 (Oct. 29, 2021 Response to Sept. 1, 2021 Request 14-15) at 40–41; Ex. 84 (Jul. 1, 2022 Response to June 30, 2022 Request 1) at 6–7.

[1401] *See* Facebook Help Center, "Adjust how ads on Facebook are shown to you based on your Activity information from ad partners," https://www.facebook.com/help/568137493302217 ("To show you more relevant ads, we receive and use information that advertisers and other partners provide to us about your activity on their websites and apps, as well as some of your offline interactions, such as purchases. . . . You can choose whether we use this information to show you ads by adjusting your Activity information from ad partners setting in your Ad settings."); Facebook Help Center, "Control the Ads You See," https://www.facebook.com/help/1075880512458213.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	hashed or not authorized for sending.[1402] ● They omit relevant context regarding Meta's [redacted][1403] [redacted][1404] [redacted]

[1402] *See* Ex. D (2023 Assessment Report) at 175; Ex. 5 (Oct. 29, 2021 Response to Sept. 1, 2021 Request 14) at 35; Ex. 84 (Jul. 14, 2022 Response to June 30, 2022 Request 1) at 5.

[1403] "[redacted]" is not a term that is used by Meta.

[1404] *See* Ex. 5 (Oct. 29, 2021 Response to Sept. 1, 2021 Request 14) at 35; Ex. 84 (Jul. 14, 2022 Response to June 30, 2022 Requests 6 & 7) at 9; *see also* Ex. D (2023 Assessment Report) at 175 (noting that [redacted].

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted] ● They fail to reflect Meta's relevant enhancement efforts, including the enhancements Meta has made to its [redacted] since the initial Assessment.[1405] Meta has a team focused on improving Meta's [redacted][1406] [redacted][1407] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding the efficacy of Meta's [redacted][1408]
Paragraph 569 569. When Facebook's [redacted] identify and filter out potential health or personally identifying information in its Business Tools data, Facebook notifies third parties via email and in two locations in Facebook's "developer dashboard." These notifications identify the data blocked as being potential personal or health data that may not comply with Facebook's terms, confirm that the removal may affect ad performance, and provide details about the affected events data (e.g., the URL where the events occurred, where the potentially violating information was found, and how to	**Paragraph 569** purports to describe the notifications Meta sends to third-party developers when Meta detects potentially sensitive information sent via the Meta Pixel and SDK. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● They mischaracterize Meta's [redacted] as being designed to detect and filter out "health or personally identifying information." As described above, Meta's [redacted] are designed to

[1405] *See* Ex. D (2023 Assessment Report) at 175–76.

[1406] *See* Ex. 5 (Oct. 29, 2021 Response to Sept. 1, 2021 Request 14) at 35.

[1407] *See, e.g.*, Ex. 4 (2021 Assessment Report) at 162.

[1408] *See, e.g.*, Ex. 4 (2021 Assessment Report) at 161–62.

Preliminary Findings of Fact (PFOF)	Response to PFOF
remove the information).[574] [574] Ex. 5 at 35 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 14).	filter out the data they detect that is sent via the Meta Pixel, SDK, and other Meta Business Tools, that Meta's systems classify as *potentially* sensitive health data, *potentially* sensitive financial data, or *potential* personally identifiable information that is not hashed or not authorized for sending.[1409] With respect to "personally identifying information" specifically, Meta's [redacted] are designed to detect and filter out: (1) *potential* personally identifying information that is unhashed, but is otherwise approved for sharing with Meta when hashed; and 2) *potential* personally identifying information that is not approved for sharing with Meta even when it is hashed.[1410] ● They omit relevant context that Meta's notifications to third-party developers regarding Meta's detection of potentially sensitive data sent via the Meta Business Tools expressly instruct those developers to determine if any potentially sensitive data is being sent to Meta and to take any necessary action to fix their integrations, as required by Meta's terms.[1411] ● They state that these notifications to third-party developers provided via email and in Events Manager (one of Meta's developer dashboards) include information about "how to remove" the data at issue. In fact, Meta's

[1409] *See* Ex. D (2023 Assessment Report) at 175; Ex. 5 (Oct. 29, 2021 Response to Sept. 1 2021 Request 14) at 35; Ex. 84 (Jul. 14, 2022 Response to June 30, 2022 Request 1) at 5.

[1410] *See* Ex. 5 (Oct. 29, 2021 Response to Sept. 1, 2021 Request 14) at 35.

[1411] *See* Ex. D (2023 Assessment Report) at 176; Ex. 5 (Oct. 29, 2021 Response to Sept. 1, 2021 Request 14) at 36.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	notifications to third-party developers inform the developer that Meta detected potentially sensitive data and provide certain details about the affected data, including the location but not the contents) of the potentially sensitive data. As noted above, these notifications instruct third-party developers to take any necessary action to fix their integrations, [redacted][1412] ● They omit relevant context that Meta educates third-party developers about their contractual obligation not to send Meta any sensitive data via the Meta Pixel and SDK and other Meta Business Tools.[1413] During the Meta Business Tools ID creation process–a necessary step to install and use any Meta Business Tool–Meta reminds third-party developers not to send Meta any sensitive data, linking to the Meta Business Tools Terms and to Meta's Business Help Center content about restricted sensitive data.[1414] In Meta's Business Help Center, Meta also has several articles that explain and give examples of the kinds of information that third-party developers should not send to Meta via the Meta Business Tools (including sensitive health and

[1412] *See* Ex. 5 (Oct. 29, 2021 Response to Sept. 1, 2021 Request 14) at 35.

[1413] *See id.* at 40.

[1414] *See* Ex. 84 (Jul. 14, 2022 Response to June 30, 2022 Request 1) at 2.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	financial data) and provide steps such developers can take to avoid sending such data.[1415] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding the notifications Meta sends to third-party developers when Meta's [redacted] detect potentially sensitive information.[1416]
Paragraphs 570–73 570. [redacted][575] 571. [redacted][576] 572. Specifically, Facebook stated that its systems "are designed to drop even potentially sensitive information that they detect [redacted]	**Paragraphs 570–73** purport to describe Meta's approach to enforcement related to third-party developers to which Meta sends notifications that they are sending data via the Meta Pixel or SDK that Meta has detected as potentially sensitive. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to implement specific enforcement mechanisms or systems related to sensitive health and financial data sent to Meta by third-party apps and websites via the Meta Pixel and SDK or any other tools. ● They omit relevant context that Meta's [redacted][1417] that it is the third-party developer's contractual obligation

[1415] *See* Ex. 5 (Oct. 29, 2021 Response to Sept. 1, 2021 Request 14) at 40.

[1416] *See* Ex. 4 (2021 Assessment Report) at 161–62; Ex. D (2023 Assessment Report) at 188, 259, 347.

[1417] *See* Ex. D (2023 Assessment Report) at 347.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][577] 573. The Company further explained, [redacted][578] [575] Ex. 5 at 41 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 15). [576] Ex. 5 at 41 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 15). [577] Ex. 5 at 41 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 15). [578] Ex. 5 at 41 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 15).	not to send sensitive information to Meta in the first place, that [redacted][1418] and that Meta's email and Events Manager notifications sent to third-party developers provide certain details about the affected data, including the location (but not the contents) of the potentially sensitive data that was detected and instruct them to take necessary action to fix their integrations, as required by Meta's terms.[1419] ● They fail to clarify that Meta's [redacted][1420] ● They fail to reflect Meta's relevant enhancement efforts, including the enhancements Meta has made to its [redacted] since the initial Assessment.[1421] Meta has a team focused on improving Meta's

[1418] *See* Ex. 5 (Oct. 29, 2021 Response to Sept. 1, 2021 Request 14) at 35.

[1419] *See* Ex. 5 Oct. 29, 2021 Response to Sept. 1, 2021 Request 14) at 35–37.

[1420] *See* Ex. 5 (Oct. 29, 2021 Response to Sept. 1, 2021 Request 15) at 41.

[1421] *See* Ex. D (2023 Assessment Report) at 175–76

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1422] [redacted][1423] [redacted][1424] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding Meta's approach to enforcement related to the third-party developers who receive notifications that Meta has detected potentially sensitive data they sent via the Meta Pixel or SDK.[1425]
E. Incident Management (¶¶ 574–98)	
Paragraphs 574–76 574. [redacted][579] 575. [redacted]	**Paragraphs 574–76** purport to set forth details about the [redacted] as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● They oversimplify and omit details

[1422] *See* Ex. 5 (Oct. 29, 2021 Response to Sept. 1, 2021 Request 14) at 35.

[1423] *See, e.g.*, Ex. 4 (2021 Assessment Report) at 162.

[1424] *See* Ex. 5 (Oct. 29, 2021 Response to Sept. 1, 2021 Request 15) at 41.

[1425] *See* Ex. 4 (2021 Assessment Report) at 161–62; Ex. D (2023 Assessment Report) at 188, 259, 347.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][580] 576. [redacted][581] *** [579] Ex. 4 at 102; Ex. 10 at 7 (Oct. 15, 2021 resp. to Sept. 16, 2021 requests 3–5). [580] Ex. 4 at 102; Ex. 10 at 7 (Oct. 15, 2021 resp. to Sept. 16, 2021 requests 3–5). [581] Ex. 10 at 7 (Oct. 15, 2021 resp. to Sept. 16, 2021 requests 3–5).	regarding Meta's comprehensive policies and procedures relating to the [redacted] ○ Specifically, Paragraph 574 omits Meta's policies and procedures to address [redacted] ○ Accordingly, to the extent paragraphs 574–76 suggest that [redacted] they are inaccurate.[1426] ● These paragraphs do not include facts available to the Commission about how Meta has exceeded its obligations under Part VII.E of the Order. Meta [redacted][1427] ○ Specifically, Paragraph 576 omits that [redacted]

[1426] *See* Ex. 4 (2021 Assessment Report) at 102 (emphasis added).

[1427] *See* Ex. 10 (Oct. 15, 2021 resp. to Sept. 16, 2021 requests 3–5) at 7.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1428]
Paragraphs 577–78 577. During testing, however, the Assessor discovered that [redacted][582] 578. [redacted][583] [582] Ex. 4 at 112; Ex. 10 at 7 (Oct. 15, 2021 resp. to Sept. 16, 2021 requests 3–5). [583] Ex. 10 at 7 (Oct. 15, 2021 resp. to Sept. 16, 2021 requests 3–5).	**Paragraphs 577–78** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to comply with any specific deadline to [redacted] or any other specific deadlines) to [redacted] Meta affirmatively chose to implement safeguards beyond those specifically required by the Order. ● Paragraph 578 omits information and important context available to the Commission regarding the [redacted]

[1428] *See* Ex. 4 (2021 Assessment Report) at 103.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1429] [redacted][1430] • Paragraphs 577–78 also omit that any theoretical or potential impact projected by the Assessor has been remediated through maturation processes described herein. [redacted]

[1429] *See* Ex. 17 (Dec. 23, 2021 resp. to Nov. 23, 2021 request 1) at 6.

[1430] *Id.* at 7.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1431] [redacted][1432] Meta has further enhanced the process by implementing [redacted][1433] ● These paragraphs omit that in the one-year period following the Assessment, Meta [redacted]

[1431] *See* Ex. 10 (Oct. 15, 2021 resp. to Sept. 16, 2021 requests 3–5) at 7.

[1432] *See id*.

[1433] *See* Ex. D (2023 Assessment Report) at 124.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1434] To the extent that these paragraphs suggest that Meta [redacted] they are inaccurate. ● They also fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] described herein.[1435]
Paragraph 579 579. [redacted]	**Paragraph 579** purports to set forth details about the [redacted] as it existed during the initial six-month Assessment. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● It oversimplifies and omits details regarding Meta's comprehensive

[1434] *See* Ex. 10 (Oct. 15, 2021 resp. to Sept. 16, 2021 requests 3–5) at 8; Ex. 76 (Apr. 15, 2022 resp. to Mar. 24, 2022 request 1) at 9.

[1435] *See* Ex. 4 (2021 Assessment Report) at 112.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][584] *** [584] Ex. 4 at 112; Ex. 10 at 8 (Oct. 15, 2021 resp. to Sept. 16, 2021 requests 3–5).	process with respect to the [redacted] ○ [redacted][1436] ○ [redacted][1437] ○ [redacted] including with respect to the actions discussed in Paragraph 579.[1438]
Paragraphs 580–83 580. During testing, however, the Assessor	**Paragraphs 580–83** purport to describe certain Assessor observations about the [redacted]

[1436] *See* Ex. 10 (Oct. 15, 2021 resp. to Sept. 16, 2021 requests 3–5) at 8.

[1437] *See id.*

[1438] *See id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
found [redacted] [585] 581. [redacted] [586] 582. The Assessor stated that [redacted] [587] 583. [redacted] [588] *** [585] Ex. 4 at 112. [586] Ex. 10 at 8 (Oct. 15, 2021 resp. to Sept. 16, 2021 requests 3–5). [587] Ex. 4 at 112. [588] Ex. 10 at 8–9 (Oct. 15, 2021 resp. to Sept. 16, 2021 requests 3–5).	[redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to comply with any specific deadline to [redacted] In implementing or meeting a [redacted] to [redacted] Meta affirmatively chose to implement safeguards beyond those specifically required by the Order. ● Paragraph 581 is inaccurate, to the extent it suggests that Meta did not [redacted] [1439] Therefore, [redacted]

[1439] *See id.* at 8.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1440] ● Paragraphs 580–83 also fail to address information available to the Commission that to the extent any theoretical or potential impact was projected by the Assessor, it has been remediated through maturation processes described herein: ○ Paragraphs 580–81 omit that in the one-year period following the initial Assessment, Meta [redacted][1441][redacted][1442] ○ Paragraph 583 misleadingly excludes information available

[1440] *See id.* at 8–9.

[1441] *See id.* at 8; *see also supra* Section IV.E, Resp. to PFOF ¶¶ 581.

[1442] *See* Ex. 10 (Oct. 15, 2021 resp. to Sept. 16, 2021 requests 3–5) at 8.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	to the Commission that Meta had [redacted][1443] Meta also implemented [redacted][1444] and has implemented [redacted][1445] ○ To the extent that these paragraphs suggest that Meta is [redacted] they are inaccurate. ● These paragraphs fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted]

[1443] *See id.*; Ex. 76 (Apr. 15, 2022 resp. to March 24, 2022 request 1) at 9.

[1444] *See* Ex. 10 (Oct. 15, 2021 resp. to Sept. 16, 2021 requests 3–5) at 9; Ex. 76 (Apr. 15, 2022 resp. to Mar. 24, 2022 request 1) at 9.

[1445] *See* Ex. D (2023 Assessment Report) at 127.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1446]
Paragraph 584 584. Once an EDM incident has been investigated and validated as a "Scraping Covered Incident" (SCI) (scraping or automated bot attacks where suspected unauthorized extraction of data has occurred from the Facebook platforms using automated mechanisms like computer programs or bots), the FTC Order requires Facebook to include it in the monthly SCI Reports it submits to the FTC, and to report it in all subsequent monthly SCI Reports until it initiates remediation.[589] [589] Ex. 4 at 113, 233.	**Paragraph 584** purports to set forth the scope of Meta's SCI reporting obligations pursuant to the Order. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● Part VII contains no specific requirements about the timing or content of SCI reports. Meta's obligations regarding Covered Incident reporting are governed by Part IX of the Order, which is not the subject of the OTSC's allegations.
Paragraphs 585–86 585. The Assessor observed that [redacted][590] 586. The Assessor concluded that [redacted]	**Paragraphs 585–86** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● They fail to address that to the extent any speculative, theoretical or potential impact was projected by the Assessor, it has been remediated through maturation processes described herein. The Assessor acknowledged that [redacted]

[1446] *See* Ex. 4 (2021 Assessment Report) at 112.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][591] *** [590] Ex. 4 at 113. [591] Ex. 4 at 113.	[redacted][1447] Such [redacted] are not required under the Order, but Meta's implementation demonstrates its continued enhancements that exceed the requirements set forth in the Order. ● Paragraph 585 fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding the [redacted] Moreover, as acknowledged by the Commission, the Assessor noted that [redacted][1448] The Assessor's own findings thus indicated that Meta had mitigated the issue with respect to [redacted][1449]
Paragraphs 587–93 587. [redacted]	**Paragraphs 587–93** purport to set forth details about the [redacted] as it existed during the initial six-month Assessment.

[1447] *See* Ex. 4 (2021 Assessment Report) at 113.

[1448] *See id.* at 113.

[1449] *Id.* (emphasis added).

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][592] 588. [redacted][593] 589. [redacted][594] 590. [redacted][595] 591. [redacted][596] 592. [redacted][597]	These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● They oversimplify and omit details regarding Meta's comprehensive policies relating to the [redacted] Paragraphs 587–88 omit that, [redacted][1450] ● They omit that Meta not only has controls in place to identify and remediate [redacted][1451]

[1450] *See* Ex. 4 (2021 Assessment Report) at 103 (emphasis added).

[1451] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
593. [redacted][598] *** [592] Ex. 4 at 103. [593] Ex. 4 at 103. [594] Ex. 4 at 103, 111. [595] Ex. 4 at 103, 111. [596] Ex. 4 at 111. [597] Ex. 4 at 111. [598] Ex. 4 at 111.	
Paragraphs 594–95 594. The Assessor found that [redacted][599] 595. The Assessor stated [redacted]	**Paragraphs 594–95** purport to describe certain Assessor observations about the [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to implement [redacted] In doing so, Meta affirmatively chose to implement safeguards beyond those specifically required by the Order. ● They fail to address that [redacted] has been remediated through maturation processes described herein. The Assessor's findings actually

Preliminary Findings of Fact (PFOF)	Response to PFOF
c [redacted] [redacted] [redacted]

Preliminary Findings of Fact (PFOF)	Response to PFOF
[601] Ex. 4 at 112.	[redacted] In doing so, Meta chose to implement processes beyond those specifically required by the Order.
Paragraphs 597–98 597. [redacted][602] 598. The Assessor concluded that [redacted][603] *** [602] Ex. 4 at 112, 232. [603] Ex. 4 at 112.	**Paragraphs 597–98** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● They fail to address that to the extent any theoretical or potential impact was projected by the Assessor, it has been remediated through maturation processes described herein. As the Assessor recognized, Meta developed a remediation plan for the issues related to [redacted][1454] Meta has also addressed issues with the [redacted][1455] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted]

[1454] *See* Ex. 4 (2021 Assessment Report) at 112.

[1455] *See* Ex. D (2023 Assessment Report) at 133.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted] The Assessor did not identify any actual instance [redacted][1456] As such, Paragraphs 597–98 rely on speculation, and are not otherwise grounded in observed facts.
F. Data Life Cycle Management (¶¶ 599–707)	
Paragraphs 599–604 599. The 2020 Order requires Facebook to ensure Covered Third Parties cannot access Covered Information from servers under Facebook's control after a reasonable period (not to exceed 30 days) from the time a user has deleted such information or terminated their account. The Order further requires Facebook to implement procedures designed to ensure that Covered Information a user enters (e.g., user-generated content) is deleted from servers under Facebook's control or de-identified such that it is no longer associated with the user's account or device, within a reasonable period (not to exceed 120 days) from the time the user has deleted such information or deleted their account.[604] 600. Facebook created the Data Life Cycle Management control domain to establish data management standards (e.g., for overseeing deletion and retention issues, and preventing deleted data from being "surfaced" (made accessible) to third parties).[605]	**Paragraphs 599–604** purport to set forth the scope of Meta's Data Life Cycle Management Domain created in response to Parts III and VII of the 2020 Order, as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to institute or adopt any controls related to the deletion of data or to limit Covered Third Parties' access to data a user has deleted. Part VII of the Order does not contain any requirements related to the deletion of data, or the time period in which Covered Third Parties are permitted to access such data. Those requirements are contained in Part III of the Order, which the Commission has not alleged and could not allege) Meta violated.[1457] ● Paragraph 599 fails to provide a

[1456] *See* Ex. 4 (2021 Assessment Report) at 112.

[1457] *See* Order, Part III.

Preliminary Findings of Fact (PFOF)	Response to PFOF
601. To that end, Facebook organized a central team to oversee its data management programs and verify its compliance with pertinent Order provisions.[606] 602. Facebook maintains user data and other information in systems it calls data stores, which retain or manage that data. The various tables and records kept in the data stores are known as data assets.[607] 603. At the time of the assessment, Facebook kept [redacted] its data in General Purpose Production Data Stores [redacted] and its Data Warehouse [redacted] collectively, "General Purpose Data Stores").[608] 604. Facebook [redacted] in Special Purpose Data Stores, which serve various purposes. [redacted][609] *** [604] Exceptions to this requirement include: (1) where required by law; (2) where necessary for the safety and security of Facebook's products, services, and users; (3) where stored solely for backup or disaster recovery purposes (subject to retention periods necessary to provide reliable service), or (4) where technically infeasible given Facebook's existing systems. Ex. 3, Part III.	complete description of Part III of the Order. Part III of the Order requires Meta to ensure that Covered Third Parties cannot access Covered Information from servers under Meta's control after a reasonable period of time, "except as required by law or where necessary to protect the [Meta] website or its Users from fraud or illegal activity," two exceptions that Paragraph 599 fails to reference.[1458] Paragraph 599 also omits reference to the exceptions delineated in Part III to the requirement that Meta implement procedures designed to ensure the deletion or de-identification of Covered Information after the user has deleted such information or their account.[1459] Part III provides for four exceptions to this requirement, explaining that the requirements may be suspended "(1) as required by law; (2) where necessary for the safety and security of Respondent's products, services, and Users, including to prevent fraud or other malicious activity; (3) where stored solely for backup or disaster recovery purposes (subject to a retention period necessary to provide a reliable service); or (4) where technically infeasible given Respondent's existing systems."[1460] ● They fail to recognize that, at the time of the initial Assessment, Meta [redacted]

[1458] *See id.*

[1459] *See id.*

[1460] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[605] Ex. 4 at 90. [606] Ex. 4 at 90. [607] Ex. 83 (Dec. 17, 2021 R. 30(b)(6) Michael Patrick Clark Dep. Tr.) at 19:5–21:11. [608] Ex. 5 at 23 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 27); Ex. 7 at 6–8 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30); Ex. 83 at 21:12–22:10. [609] Ex. 5 at 23 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 27); Ex. 7 at 6–8 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30); Ex. 83 at 21:12–22:10.	[redacted][1461][redacted][1462] • They [redacted] and thus do not reflect changes and enhancements Meta made to its Data Life Cycle Management control domain processes since the 2021 Assessment, as reflected in [redacted][1463][redacted][1464][redacted][1465][redacted]

[1461] *See* Ex. 4 (2021 Assessment Report) at 90 [redacted] *See also* Ex. D (2023 Assessment Report at 102.

[1462] Ex. 4 (2021 Assessment Report) at 90, 92.

[1463] Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30) at 6.

[1464] Ex. 73 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 2) at 17; Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30 at 6.

[1465] *See* Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30) at 6; Ex. D (2023 Assessment Report) at 117.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1466] • They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding Meta's Data Life Cycle Management Domain described herein.[1467]
Paragraphs 605–10 605. [redacted][610] 606. Facebook's Rule 30(b)(6) corporate designee on topics relating to the [redacted] explained that an API (application programming interface) is "generically how one software program or set of infrastructure talks to another program or infrastructure."[611] 607. APIs are the authorized means by which third parties can access Facebook data.[612] 608. [redacted]	**Paragraphs 605–10** purport to set forth details about [redacted] These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: • Nothing in Part VII of the Order required [redacted] • They imply or purport that [redacted][1468] [redacted][1469] [redacted]

[1466] *See* Ex. D (2023 Assessment Report) at 100.

[1467] *See* Ex. 4 (2021 Assessment Report) at 93–94.

[1468] *See* Ex. 4 (2021 Assessment Report) at 90 [redacted].

[1469] *See* Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28) at 32.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][613] 609. At Facebook, [redacted][14] 610. The Ent and Node frameworks are written in different software languages, so there are differences in the software itself. [redacted][615] *** [610] Ex. 83 at 26:11–23. [611] Ex. 83 at 34:1–5. [612] Ex. 83 at 35:2–5. [613] Ex. 83 at 26:11–23. [614] Ex. 83 at 27:1–9. [615] Ex. 83 at 27:13–23.	[redacted][1470] ● They wrongly imply or purport that any third party can access [redacted][1471] As set forth in the 2021 Assessment Report, [redacted][1472] [redacted][1473] Further, each Public and Partner API will only provide access to some limited subset of data.[1474] In addition, and as described more fully in Meta's response to Paragraphs 375–91, *supra*, [redacted]

[1470] *See id.*; Ex. 7 (Dec. 3, 2021 response to Aug. 27, 2021 requests 29–30) at 6.

[1471] *See* Ex. 4 (2021 Assessment Report) at 137–38; Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28) at 32–33; *see* Ex. 83 (M. Clark Dep. at 131:20–23 [redacted] *See also supra* Section IV.C, Resp. to PFOF ¶¶ 375–91 (noting that the PFOF "wrongly suggests that all third-party developers are given access to all Public APIs" and explaining that "Meta's App Review requires third parties to request approval to access certain permissions associated with Public API Products to ensure that a third party can only gain access to Covered Information for a permissible use case").

[1472] Ex. 4 (2021 Assessment Report) at 137.

[1473] *Id.*

[1474] *See* Ex. 6 (Nov. 19, 2021 resp. to Sept. 22, 2021 request 4) at 43–44 (describing a Meta process designed to help ensure an app "complies with the allowed usage *for the data available through that API*") (emphasis added).

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1475] [redacted][1476] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] described herein.[1477]
Paragraphs 611–15 611. At Facebook, [redacted][616] 612. Facebook's Rule 30(b)(6) corporate designee witness on topics relating to [redacted] explained that [redacted] According to Facebook's corporate designee,	**Paragraphs 611–15** purport to set forth details about Meta's [redacted] as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to [redacted] ● They fail to reflect testimony explaining that [redacted][1478]

[1475] Ex. 4 (2021 Assessment Report) at 137.

[1476] *Id.*

[1477] *See id.* at 136–37.

[1478] *See* Ex. 7 (Dec. 3, 2021 Resp. to Aug. 27, 2021 requests 29–30) at 6; Ex. 83 (M. Clark Dep.) at 31:4–17.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][617] 613. Facebook's Rule 30(b)(6) corporate designee stated that [redacted][618] 614. [redacted][619] 615. According to Facebook's Rule 30(b)(6) corporate designee, [redacted][620] ***	[redacted][1479] For example, [redacted][1480] ● They omit testimony and other information explaining [redacted][1481][1482]

[1479] Ex. 83 (M. Clark Dep.) at 31:4–17.

[1480] *See* Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 27 at 24.

[1481] Ex. 83 (M. Clark Dep.) at 32:2–25.

[1482] *Id.* at 33:8–25.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[616] Ex. 83 at 27:24–28:9. [617] Ex. 83 at 28:10–17. [618] Ex. 83 at 33:19–21. [619] Ex. 83 at 28:18–29:4. [620] Ex. 83 at 29:6–30:18.	[redacted][1483] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] described herein.
Paragraphs 616–17 616. [redacted][621] 617. [redacted][622] *** [621] Ex. 4 at 228–229. [622] Ex. 4 at 228.	**Paragraphs 616–17** purport to set forth details about [redacted] as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to create or implement the [redacted] In doing so, Meta affirmatively chose to implement safeguards beyond those specifically required by the Order. ● They omit that the [redacted][1484] ● They omit that [redacted]

[1483] Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30) at 7.

[1484] *See* Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28) at 32–33.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1485] ● They omit the Assessor's findings in the 2023 Assessment Report that [redacted][1486] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] described herein.[1487]
Paragraphs 618–19 618. The Ent and Node frameworks are software components [redacted][623] 619. [redacted][624] *** [623] Ex. 83 at 39:22–40:20. [624] Ex. 83 at 40:21–41:8.	**Paragraphs 618–19** purport to set forth details about [redacted] as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required [redacted] ● They omit discussion [redacted]

[1485] *See* Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 27) at 23–25.

[1486] *See* Ex. D (2023 Assessment Report) at 107.

[1487] *See* Ex. 4 (2021 Assessment Report) at 137.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1488] [redacted][1489] ● They fail to mention that during the initial six-month Assessment, Meta required [redacted][1490] [redacted][1491] ● Paragraph 618 states that [redacted]

[1488] *See* Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28) at 32–33; Ex. 7 (Dec. 3, 2021 Resp. to Aug. 27, 2021 requests 29–30) at 6–7.

[1489] *See* Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28) at 33.

[1490] *See* Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30) at 6–7.

[1491] *See id.* at 6; Ex. D (2023 Assessment Report) at 117.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1492] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with [redacted] during the initial Assessment period.[1493]
Paragraphs 620–22 620. The Assessor found that [redacted][625] 621. [redacted]	**Paragraphs 620–22** purport to describe certain Assessor observations about [redacted] as they existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta [redacted] ● Paragraph 622 fails to mention that Mr. Zuckerberg said [redacted]

[1492] *See* Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30) at 6.

[1493] *See* Ex. 4 (2021 Assessment Report) at 93–94.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][626] 622. At his February 4, 2022, deposition, Chief Executive Officer Mark Zuckerberg was asked about [redacted] Zuckerberg responded: [redacted][627] ***	[redacted][1494] Mr. Zuckerberg's testimony [redacted][1495] ● Paragraph 621 does not reflect changes and enhancements Meta made since the 2021 Assessment and the Assessor's more recent findings. The Assessor recognized in the 2023 Assessment Report that, [redacted][1496]

[625] Ex. 4 at 91, 93–94.
[626] Ex. 4 at 93–94.
[627] Ex. 43 at 195:1–197:1.

[1494] Ex. 43 (M. Zuckerberg Dep.) at 195:1–25 [redacted]

[1495] *Id.* at 196:1–197:10.

[1496] Ex. D (2023 Assessment Report) at 8.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1497] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1498]
Paragraphs 623–35 623. The Assessor stated that [redacted][628] 624. The Assessor found that [redacted]	**Paragraphs 623–35** purport to describe certain Assessor observations about Meta's [redacted] as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to create or implement [redacted] In creating [redacted] Meta affirmatively chose to implement safeguards and procedures beyond those specifically required by the Order. ● Paragraphs 623 and 624 suggest that Meta's progress toward creating a [redacted] These paragraphs are also misleading insofar as they omit information known to the Commission regarding Meta's ongoing efforts to develop a [redacted]

[1497] *See* Ex. 73 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 2) at 16–17; Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30) at 6; Ex. D (2023 Assessment Report at 100.

[1498] *See* Ex. 4 (2021 Assessment Report) at 94–96.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][629] 625. At the Rule 30(b)(6) deposition of Facebook's corporate designee regarding topics relating to the [redacted], Facebook's witness [redacted][630] 626. [redacted][631] 627. In addition, the Assessor noted that [redacted]	[redacted][1499] Additionally, Meta has been [redacted] Meta is continuing to enhance—including based on Assessor feedback—the processes and tools it has in place to help ensure [redacted][1500] ● Paragraph 627 suggests that Meta had not [redacted] Instead, Meta made the decision to [redacted][1501] ● Paragraphs 629–35 fail to note that the Assessor's observations [redacted][1502]

[1499] *See* Ex. 73 at 9 (Apr. 29, 2022 resp. to Mar. 17, 2022 request 7) at 8–9.

[1500] *Id.* at 9.

[1501] *See* Ex. D (2023 Assessment Report) at 11–12 (emphasis added).

[1502] *See* Ex. 4 (2021 Assessment Report) at 19; *see also* Ex. 51 (Feb. 19, 2022 resp. to Jan. 10, 2022 request 10.viii) at 19–20.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][632] 628. The Assessor stated [redacted] The Assessor concluded [redacted][633] 629. The Assessor also observed that [redacted][634] 630. The Assessor observed [redacted] The Assessor stated [redacted][635]	Specifically, Paragraph 630 omits the Assessor's findings that, [redacted][1503] ● They omit reference to [redacted] as reflected in the Assessor's most recent findings. For example, the 2023 Assessment Report notes that Meta has enhanced its approach to [redacted][1504] In addition, the Assessor recognized in its 2023 Assessment Report that Meta has

[1503] *See* Ex. D (2023 Assessment Report) at 116.

[1504] *Id.* at 102.

Preliminary Findings of Fact (PFOF)	Response to PFOF
631. Moreover, the Assessor observed that [redacted][636]	addressed the previous Gaps identified with respect to [redacted][1505] In particular, these issues have been remediated through [redacted][1506]
632. The Assessor concluded that [redacted][637]	the Assessor concluded that Meta's remediation efforts reflected a [redacted][1507]
633. The Assessor identified [redacted][638]	• They do not reflect changes and enhancements Meta made to its [redacted] Meta implemented [redacted][1508]
634. The Assessor also noted [redacted]	

[1505] *Id.* at 115.

[1506] *Id.* at 116.

[1507] *Id.* at 100.

[1508] *Id.* at 103.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted] the Assessor stated, [redacted][639] 635. The Assessor also stated that [redacted] The Assessor observed [redacted] The Assessor noted [redacted][640] *** [627] Ex. 43 at 195:1–197:1. [628] Ex. 4 at 94. [629] Ex. 4 at 94–95. [630] Ex. 83 at 72:4–73:24. [631] Ex. 83 at 76:1–21. [632] Ex. 4 at 95. [633] Ex. 4 at 95. [634] Ex. 4 at 95. [635] Ex. 4 at 95.	[redacted][1509] [redacted][1510] [redacted][1511] In addition, Meta implemented [redacted][1512] [redacted][1513] [redacted][1514] [redacted][1515] In addition, Meta developed [redacted]

[1509] *Id.*

[1510] *Id.*

[1511] *Id.*

[1512] *Id.* at 104.

[1513] *Id.*

[1514] *Id.*

[1515] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[636] Ex. 4 at 95. [637] Ex. 4 at 95. [638] Ex. 4 at 95–96. [639] Ex. 4 at 95–96. [640] Ex. 4 at 96.	[redacted][1516][redacted][1517] ● Paragraphs 631–32 do not discuss that Meta, as part of its remediation efforts, [redacted][1518][redacted][1519][redacted]

[1516] *Id.* at 138.

[1517] *Id.* at 143.

[1518] *Id.* at 106.

[1519] *Id.* at 117.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1520] In addition, as the Assessor notes in its 2023 Report, [redacted][1521] For example, [redacted][1522] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding Meta's [redacted] described herein.[1523]
Paragraphs 636–48 636. The Assessor stated that, [redacted][641] 637. According to the Assessor, [redacted]	**Paragraphs 636–48** purport to describe certain Assessor observations about Meta's [redacted] as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because:

[1520] *Id.* at 106.

[1521] *Id*. at 107.

[1522] *Id.*

[1523] *See* Ex. 4 (2021 Assessment Report) at 19, 94–96.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][642] 638. [redacted][643] 639. The Assessor stated, [redacted][644] 640. The Assessor found that [redacted]	• Nothing in Part VII of the Order required Meta to create a [redacted] In creating [redacted] Meta affirmatively chose to implement safeguards and procedures beyond those specifically required by the Order. • They fail to mention that at the time of the 2021 Assessment, Meta [redacted][1524] In particular, the Assessor cited [redacted][1525] • They fail to discuss additional details about the [redacted][1526] It also fails to recognize that the Assessor found that Meta's [redacted]

[1524] *Id.* at 96.

[1525] *Id.*

[1526] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][645] 641. The Assessor observed that [redacted][646] 642. [redacted][647] 643. The Assessor stated [redacted][648] 644. [redacted]	[redacted][1527] ● Paragraph 641 fails to discuss facts known to the Commission, [redacted][1528] as of the end of the initial Assessment period in the second half of 2022.[1529] ● Paragraphs 647 and 648 refer to February 2022 deposition testimony without also referring to the [redacted] ○ The Commission's citation to Mark Zuckerberg's February 2022 testimony regarding [redacted] omits reference to the Assessor's findings that, as of the initial Assessment, [redacted]

[1527] Ex. D (2023 Assessment Report) at 105.

[1528] Ex. 73 (Apr. 29, 2022 resp. to Mar. 17, 2022 request 7) at 8–9.

[1529] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted] the Assessor concluded that [redacted][649] 645. The Assessor confirmed [redacted][650] 646. The Assessor concluded that [redacted][651] 647. At his February 4, 2022, deposition, Chief Executive Officer Mark Zuckerberg was asked [redacted]	[redacted][1530] ○ The Assessor also observed that, with respect to [redacted][1531] Meta's remediation efforts were therefore well underway, and known to the Commission, at the time of the February 2022 deposition. ● Paragraphs 640 and 644 do not reflect the progress that Meta has made since the 2021 Assessment to enhance [redacted] As the Assessor acknowledged, [redacted][1532] Meta [redacted]

[1530] Ex. 4 (2021 Assessment Report) at 93.

[1531] *Id.* at 96.

[1532] Ex. D (2023 Assessment Report) at 106.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted] Zuckerberg responded [redacted] Zuckerberg responded, [redacted][652] 648. At his February 4, 2022, deposition, Chief Executive Officer Mark Zuckerberg was asked, "Is your goal to eventually have a complete inventory of all data assets and data objects within data stores?" Zuckerberg responded, "I think in theory."[653] *** [641] Ex. 4 at 96. [642] Ex. 4 at 96. [643] Ex. 4 at 96. [644] Ex. 4 at 96. [645] Ex. 4 at 94, 96. [646] Ex. 4 at 97. [647] Ex. 4 at 97. [648] Ex. 4 at 97. [649] Ex. 4 at 97. [650] Ex. 4 at 96. [651] Ex. 4 at 96. [652] Ex. 43 at 223:12–224:12. [653] Ex. 43 at 224:13–16.	[redacted][1533] [redacted][1534] ● Paragraphs 645 and 646 omit relevant context from the Assessor's recent Report, which notes that [redacted][1535] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding Meta's [redacted] described herein.[1536]
Paragraphs 649–59 649. The Assessor observed that [redacted]	**Paragraphs 649–59** purport to describe certain Assessor observations about Meta's [redacted] as it existed during the initial six-month Assessment.

[1533] *Id.*

[1534] *See* Ex. 4 (2021 Assessment Report) at 96; Ex. D (2023 Assessment Report) at 106.

[1535] Ex. D (2023 Assessment Report) at 117.

[1536] *See* Ex. 4 (2021 Assessment Report) at 96.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][654] 650. Facebook uses the term "data store owner" to refer to the team that designs and maintains a data store. For example, [redacted][655] 651. [redacted][656] 652. [redacted]	These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to develop [redacted] In developing [redacted] Meta affirmatively chose to implement procedures beyond those specifically required by the Order. ● [redacted] in Paragraphs 649 and 651 suggests that the [redacted]

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][657] 653. [redacted][658] 654. In evaluating this process, the Assessor observed [redacted][659] 655. During the initial assessment, [redacted][660] 656. [redacted][661]	[redacted][1537] In addition, the Assessor's characterization in Paragraph 649 that [redacted] ● They fail to mention that, at the time of the initial Assessment, [redacted][1538] The Commission's preliminary factual findings are also incomplete and therefore inaccurate insofar as they fail to mention that, at the time of the initial Assessment, Meta [redacted]

[1537] Ex. 5 (Oct. 29, 2021 resp. to Aug, 27, 2021 request 27) at 23.

[1538] *Id.* at 23–24.

Preliminary Findings of Fact (PFOF)	Response to PFOF
657. The Assessor concluded [redacted] The Assessor noted [redacted][662] 658. Since the initial assessment, [redacted][663] 659. [redacted][664] ***	[redacted][1539] ● They do not reflect information available to the Commission regarding the progress of Meta's implementation of [redacted][1540] [redacted][1541] [redacted][1542] In addition, Meta noted that it planned to complete [redacted][1543] Meta completed [redacted][1544] ● They fail to reflect key changes made to the [redacted]

[654] Ex. 4 at 93–94.
[655] Ex. 83 at 24:16–22, 24:23–25:12.
[656] Ex. 6 at 32–33 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28).
[657] Ex. 4 at 97.
[658] Ex. 5 at 23–24 (Oct. 29, 2021 resp. to Aug. 27,

[1539] *Id.* at 24.

[1540] Ex. 73 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 2) at 16–17; Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 27) at 24–25; *see also* Ex. D (2023 Assessment Report) at 109.

[1541] Ex. 73 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 2) at 17.

[1542] *Id.*

[1543] *Id.*

[1544] Ex. D (2023 Assessment Report) at 109.

Preliminary Findings of Fact (PFOF)	Response to PFOF
2021 request 27). [659] Ex. 4 at 97–98; Ex. 5 at 23 (Oct. 29, 2021 resp. to Aug 27, 2021 request 27). [660] Ex. 5 at 24 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 27). [661] Ex. 4 at 97–98; Ex. 83 at 97:20–101:19. [662] Ex. 4 at 97–98. [663] Ex. 5 at 25 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 27). [664] Ex. 5 at 25 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 27).	[redacted] As discussed in the 2023 Assessment Report, [redacted][1545] ○ Specifically, Meta developed [redacted] ■ First, to [redacted][1546] As the Assessor noted, [redacted]

[1545] *Id.* at 117.

[1546] *Id.* at 109.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1547] ■ Second, Meta introduced the [redacted][1548] As the Assessor explained, the [redacted][1549] [redacted][1550] [redacted]

[1547] *Id.*

[1548] *Id.*

[1549] *Id.*

[1550] *Id.* at 110.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1551] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding Meta's [redacted] described herein.[1552]
Paragraphs 660–98 660. The Order requires Facebook to ensure a Covered Third Party cannot access Covered Information from servers under Facebook's control after a reasonable period of time – not to exceed 30 days – from when the user has deleted such information or terminated their account.[665] 661. The Order also requires Facebook to design, implement, maintain, and document safeguards that control for the material internal and external risks it identifies, and requires that each safeguard be based not only on the volume and sensitivity of Covered Information at risk, but also the likelihood that such risk could be realized and result in the unauthorized access, collection, use, destruction, or disclosure of the Covered Information.[666] 662. [redacted][667] 663. [redacted]	**Paragraphs 660–98** purport to describe certain Assessor observations about [redacted] as they existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to develop [redacted] in any particular manner. In utilizing [redacted] Meta affirmatively chose to implement procedures beyond those specifically required by the Order. ● The Commission's preliminary factual findings are incomplete and therefore inaccurate insofar as Paragraph 660 fails to acknowledge the two exceptions set forth in Part III of the Order.[1553] ● Paragraph 662 suggests that Meta continues to maintain [redacted]

[1551] *Id.*

[1552] *See* Ex. 4 (2021 Assessment Report) at 97–98.

[1553] *See supra* Section IV.F, Resp. to PFOF ¶¶ 599–604.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][668] 664. [redacted][669] 665. [redacted][670] 666. The Assessor found [redacted][671] 667. [redacted][672] 668. [redacted]	P[redacted][1554] As a result, the terms [redacted][1555] ● Paragraph 662 fails to mention that Meta's [redacted][1556] Meta's [redacted][1557] In addition to its processes in place that [redacted] "Meta also has policies in place [redacted][1558]

[1554] Ex. 73 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 2) at 16–17.

[1555] *See* Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30) at 6; Ex. D (2023 Assessment Report) at 117.

[1556] Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28) at 33.

[1557] *Id.*

[1558] *Id.* at 32.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][673] 669. [redacted][674] 670. At the December 2021 Rule 30(b)(6) deposition, Facebook's corporate designee explained, [redacted] that [redacted] The witness further stated [redacted][675] 671. [redacted][676] 672. [redacted][677] 673. The Assessor explained that, [redacted]	[redacted][1559] ● Paragraph 664 suggests that [redacted][1560] ● Paragraphs 668 and 681 are also misleading insofar as they suggest that [redacted] As Meta has explained, [redacted][1561] Consistent with this conclusion, Meta is not aware of [redacted][1562] While the Commission alludes to these conclusions in Paragraph 684, its assertions at Paragraphs 668 and 681 are inconsistent and therefore misleading. ● Paragraph 671 fails to mention that

[1559] *Id.* at 33.

[1560] *See* Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30) at 6.

[1561] Ex. 6 Nov. 19, 2021 resp. to Aug. 27, 2021 request 28) at 33.

[1562] Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30) at 7.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][678] 674. [redacted][679] 675. [redacted][680] 676. [redacted]	[redacted][1563] [1564] For example, [redacted][1565] ● Paragraph 671 does not mention that [redacted][1566] ● Paragraph 673 is inconsistent with Paragraph 674 of this PFOF, and inaccurately suggests that [redacted][1567] For example, at the time of the Assessment, Meta required [redacted]

[1563] *See supra* Section IV.F, Resp. to PFOF ¶¶ 611–15; Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30) at 6; Ex. 83 (M. Clark Dep.) at 31:4–17.

[1564] Ex. 83 (M. Clark Dep.) at 31:10–14.

[1565] *See* Ex. D (2023 Assessment Report) at 110.

[1566] *Id.* at 107; *see also supra* Section IV.F, Resp. to PFOF ¶¶ 616–17.

[1567] *See* PFOF ¶ 674 (citing Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30) at 7).

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][681] 677. The Assessor concluded that, [redacted][682] 678. The Assessor found that [redacted][683] 679. The Assessor observed that [redacted][684] 680. Based on Facebook's review of the data stores onboarded to its Data Deletion program as of December 2021, the Company reported there were [redacted] Special Purpose Data Stores that [redacted][685]	[redacted] and in addition, [redacted][1568] In addition, [redacted][1569] Moreover, as discussed above, since the initial Assessment, [redacted][1570] ● Paragraph 673 wrongly suggests that Meta [redacted] Paragraph 673 also fails to mention that the Assessor noted in its Report that Meta has had processes in place [redacted]

[1568] Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 27) at 24; *see also* Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28) at 32–33; Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30 at 7.

[1569] Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30) at 7.

[1570] Ex. 73 (Apr. 29, 2022 resp. to Mar. 17, 2022 request 7) at 9; Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 request 29–30) at 6; Ex. D (2023 Assessment Report) at 117.

Preliminary Findings of Fact (PFOF)	Response to PFOF
681. [redacted][686] 682. For instance, it is possible for non-schematized data to be shared with Covered Third Parties by pathways other than Public or Partner APIs. This occurs, for example, when a user chooses to publicly share their non-schematized data, [redacted][687] 683. The Assessor found that, [redacted][688] 684. In response to the FTC's request, Facebook stated it is "not aware" of any instances during the period from June 12, 2019 to August 27, 2021 in which a Covered Third Party, such as a developer or other similar third party, accessed Covered Information from [redacted]	[redacted][571] In particular, the Assessor noted that Meta implemented processes requiring [redacted][1572] It also fails to note that, [redacted][1573] ● Paragraph 676 incorrectly [redacted] Instead, Meta stated in its December 3, 2021 response to requests 29 and 30 of the FTC's August 27, 2021 letter that it expected to complete this process [redacted][1574] Meta subsequently provided an update in response to a later request that it expected to complete this work [redacted][1575] ● Paragraph 678 does not reflect [redacted]

[1571] Ex. 4 (2021 Assessment Report) at 99.

[1572] *Id.*

[1573] *Id.*

[1574] Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30) at 7.

[1575] Ex. 76 (Apr. 15, 2022 resp. to Mar. 24, 2022 request 3) at 9.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted] via an API more than 30 days after a user deleted such information.[689] 685. [redacted][690] 686. [redacted][691] 687. The Assessor stated [redacted][692] 688. Facebook conceded [redacted][693] 689. Facebook further explained [redacted]	[redacted][1576] Meta [redacted] As [Meta] explained to the Assessor, [redacted][1577] In addition, this presentation is inconsistent with Paragraphs 651 and 653 of this PFOF, which [redacted] ● Paragraph 681 wrongly implies that it would be relevant or possible for Meta to [redacted]

[1576] *See supra* Section IV.F, Resp. to PFOF ¶¶ 649–59.

[1577] Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 27) at 23.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][694] 690. Specifically, Facebook reported [redacted][695] 691. [redacted][696] 692. [redacted][697] 693. Facebook's safeguard [redacted][698] 694. The Assessor found that [redacted]	[redacted] The Commission misleadingly omits that [redacted][1578] In addition, Paragraphs 681 and 682 are misleading insofar as Paragraph 681 fails to sufficiently clarify that [redacted] ● Paragraph 682 fails to mention that the [redacted]

[1578] Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30) at 7.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][699] 695. The Assessor concluded [redacted][700] 696. At the December 2021 Rule 30(b)(6) deposition on topics relating to the [redacted] Facebook's corporate designee testified [redacted][701] 697. [redacted][702] 698. [redacted]	[redacted][1579] ● Paragraphs 681 and 683 fail to mention that Meta reported that it was not aware of [redacted][1580] ● Paragraph 685 fails to mention that these existing processes and efforts which Meta relied on to determine [redacted][1581] Additionally, Paragraph 685 fails to discuss additional details provided during Michael Patrick Clark's December 2021 testimony about [redacted][1582]

[1579] *See* Ex. 4 (2021 Assessment Report) at 97, 178; Ex. D (2023 Assessment Report) at 112, 206.

[1580] Ex. 83 (M. Clark Dep.) at 57:6–21.

[1581] *Id.* at 56:21–58:4.

[1582] *Id.* at 57:16–21.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][703] *** [665] Ex. 3, Part III. [666] Ex. 3, Part VII.E. [667] Ex. 4 at 98–99. [668] Ex. 6 at 32–33 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28); Ex. 7 at 6 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30 . [669] Ex. 6 at 32–33 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28); Ex. 83 at 46:19–47:18. [670] Ex. 6 at 32–33 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28); Ex. 7 at 6 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30 . [671] Ex. 4 at 98. [672] Ex. 6 at 32–33 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28); Ex. 7 at 6 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30 . [673] Ex. 83 at 42:21–24. [674] Ex. 7 at 6 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30 . [675] Ex. 83 at 49:24–51:1. [676] Ex. 83 at 31:18–21. [677] Ex. 83 at 31:22–32:1. [678] Ex. 4 at 99. [679] Ex. 7 at 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30 . [680] Ex. 4 at 99; Ex. 83 at 118:8–21. [681] Ex. 7 at 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30 . [682] Ex. 4 at 99. [683] Ex. 4 at 98–99. [684] Ex. 4 at 98–99. [685] Ex. 7 at 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30 . [686] Ex. 7 at 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30 . [687] Ex. 7 at 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30); Ex. 83 at 58:19–59:9. [688] Ex. 4 at 98–99. [689] Ex. 7 at 8 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30 . [690] Ex. 83 at 56:4–58:11.	[redacted] • Paragraph 686 fails to note that [redacted][1584] It also fails to mention that Meta has in place [redacted][1585] • Paragraph 688 fails to mention that it was unnecessary for Meta to [redacted][1586] • Paragraphs 692–98 suggest that Meta was under some obligation to [redacted]

[1583] *Id.* at 57:22–58:4.

[1584] Ex. 4 (2021 Assessment Report) at 98; Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28) at 33.

[1585] Ex. 4 (2021 Assessment Report) at 98.

[1586] Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28) at 32–33.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[691] Ex. 6 at 32–33 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28). [692] Ex. 4 at 98–99. [693] Ex. 6 at 32–33 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28). [694] Ex. 6 at 32–33 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28). [695] Ex. 6 at 32–33 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28). [696] Ex. 83 at 52:19–21. [697] Ex. 4 at 98–99. [698] Ex. 4 at 98. [699] Ex. 4 at 98–99. [700] Ex. 4 at 94, 98. [701] Ex. 83 at 118–120:14. [702] Ex. 6 at 32–33 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28); Ex. 5 at 25–26 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 32). [703] Ex. 6 at 32–33 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28); Ex. 83 at 113:4–116:16.	[redacted] As described above, as of the initial Assessment, Meta had implemented a number of controls and processes designed to ensure that [redacted][1587] • Paragraph 698 fails to mention that Meta reported to the Commission on April 15, 2022, that it had developed and deployed [redacted][1588] • Paragraphs 692–98 omit reference to the Assessor's findings that Meta has developed and implemented [redacted][1589]

[1587] *Id.* at 32–33; Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 requests 29–30) at 6–7.

[1588] Ex. 76 (Apr. 15, 2022 resp. to Mar. 24, 2022 request 4) at 9.

[1589] *See* Ex. D (2023 Assessment Report) at 117.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1590] In addition, the 2023 Assessment Report notes that Meta has now implemented [redacted][1591] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations [redacted] described herein.[1592]
Paragraphs 699–707 699. [redacted][704] 700. [redacted]	**Paragraphs 699–707** purport to describe certain Assessor observations about [redacted] as those processes existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to require [redacted] nor does it require Meta to implement [redacted]

[1590] *Id.*

[1591] *Id.*

[1592] Ex. 4 (2021 Assessment Report) at 98–99.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][705] 701. [redacted][706] 702. In testing Facebook's enforcement of this policy, the Assessor identified [redacted][707] 703. Moreover, the Assessor observed that [redacted]	[redacted] In adopting a policy that [redacted] Meta affirmatively chose to implement procedures beyond those specifically required by the Order. ● Paragraph 699 suggests that the [redacted] Meta's response explains that [redacted][1593] ● Paragraphs 702 and 703 fail to recognize that the controls described in Paragraph 701 were implemented by Meta to [redacted] and that the [redacted][1594] ● Paragraphs 704 and 705 fail to include

[1593] *See* Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 32) at 25–26.

[1594] *See id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][708] 704. [redacted][709] 705. [redacted][710] 706. [redacted]	the additional context known to the Commission that the [redacted][1595] In particular, Meta informed the Commission that [redacted][1596] ● Paragraph 706 fails to include the additional context known to the Commission that the Assessor concluded in 2021 [redacted] In particular, [redacted][1598] Additionally, as Meta [redacted]

[1595] *See* Ex. 6 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 31) at 20–21.

[1596] *Id.* at 20.

[1597] *See id.* at 21 (citing Ex. 4 (2021 Assessment Report at 94).

[1598] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted] 707. [redacted][712] ***	[redacted][1599] [redacted][1600] [redacted][1601]

[704] Ex. 5 at 25–26 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 32).
[705] Ex. 6 at 32–33 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28).
[706] Ex. 5 at 25–26 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 32); Ex. 4 at 100.
[707] Ex. 4 at 100.
[708] Ex. 4 at 100; Ex. 5 at 25 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 32).
[709] Ex. 6 at 32–33 (Nov. 19, 2021 resp. to Aug. 27,

[1599] Ex. 5 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 27) at 23.

[1600] *Id.* at 24.

[1601] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
2021 request 28). [710] Ex. 6 at 32–33 (Nov. 19, 2021 resp. to Aug. 27, 2021 request 28). [711] Ex. 4 at 99. [712] Ex. 5 at 25–26 (Oct. 29, 2021 resp. to Aug. 27, 2021 request 32); Ex. 6 at 20–21, 32–33 (Nov. 19, 2021 resp. to Aug. 27, 2021 requests 28, 31).	[redacted][1602] ● They omit that Meta has fundamentally [redacted][1603] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] described herein.[1604]
G. Security for Privacy (¶¶ 708–58)	
Paragraphs 708–20 708. [redacted][713] 709. [redacted][714] 710. [redacted]	**Paragraphs 708–20** purport to set forth details about [redacted] as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● They do not include facts available to the Commission about [redacted]

[1602] *Id.*

[1603] Ex. D (2023 Assessment Report) at 117; *see also supra* Section IV.F, Resp. to PFOF ¶¶ 636–48.

[1604] Ex. 4 (2021 Assessment Report) at 94, 97, 99.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][715] 711. [redacted][716] 712. [redacted][717] 713. [redacted][718] 714. [redacted][719] 715. [redacted][720]	[1605][redacted][1606] ○ Specifically, Paragraphs 710 and 714 already acknowledge [redacted][1607] ○ And as Paragraph 709 acknowledges, [redacted][1608] ○ Paragraph 716 fails to note, as in Paragraph 717, [redacted]

[1605] *See* Ex. 10 (Oct. 15, 2021 resp. to Aug. 19, 2021 request 2) at 2; Ex. D (2023 Assessment Report at 146 [redacted]

[1606] *See* Ex. 17 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 2), at 9–10, 12–13.

[1607] Ex. D (2023 Assessment Report) at 249–51.

[1608] Ex. 4 (2021 Assessment Report) at 121.

Preliminary Findings of Fact (PFOF)	Response to PFOF
716. [redacted][721] 717. [redacted][722] 718. [redacted][723] 719. [redacted][724] 720. [redacted][725] [713] Ex. 4 at 90, 114; Ex. 17 at 10–11 (Dec. 23, 2021 resp. to Nov. 4, 2021 request 1). [714] Ex. 4 at 118. [715] Ex. 17 at 10–11 (Dec. 23, 2021 resp. to Nov. 4, 2021 request 1). [716] Ex. 17 at 10–11 (Dec. 23, 2021 resp. to Nov. 4, 2021 request 1). [717] Ex. 17 at 11 (Dec. 23, 2021 resp. to Nov. 4, 2021 request 1). [718] Ex. 17 at 11 (Dec. 23, 2021 resp. to Nov. 4, 2021 request 1).	[redacted] ● Paragraphs 719 and 720 selectively quote Meta's Part XV responses in a misleading way, omitting that [redacted][1609] Paragraphs 719 and 720 also omit that the Assessor determined during the first biennial assessment [redacted][1610]

[1609] Ex. 17 at 17 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 4) (emphasis added).

[1610] *See* Ex. D (2023 Assessment Report) at 248–49.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[719] Ex. 17 at 12 (Dec. 23, 2021 resp. to Nov. 4, 2021 request 1). [720] Ex. 17 at 12 (Dec. 23, 2021 resp. to Nov. 4, 2021 request 1). [721] Ex. 17 at 13 (Dec. 23, 2021 resp. to Nov. 4, 2021 request 1). [722] Ex. 17 at 13 (Dec. 23, 2021 resp. to Nov. 4, 2021 request 1). [723] Ex. 17 at 10 (Dec. 23, 2021 resp. to Nov. 4, 2021 request 1). [724] Ex. 17 at 13, 17 (Dec. 23, 2021 resp. to Nov. 4, 2021 requests 1, 4). [725] Ex. 17 at 17 (Dec. 23, 2021 resp. to Nov. 4, 2021 request 4).	
Paragraphs 721–27 721. [redacted] [726] 722. Part VII.E.3 of the 2020 Order requires Facebook to "design[], implement[], and maintain[] access policies and controls that limit employee access to any table(s) or other comparable data storage units [in Facebook's "data warehouse(s)"] known to contain Covered Information to only those employees with a business need to access such Covered Information."[727] 723. [redacted] [728] 724. [redacted]	**Paragraphs 721–27** purport to set forth details about differing interpretations of the scope of [redacted] by the Commission, the Assessor and Meta, [redacted] prior to and during the initial Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to implement [redacted] Among other things, [redacted] ● Paragraph 726 wrongly suggests there was a [redacted] Specifically, Paragraph 723 notes [redacted]

[redacted] Part VII.E.3.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][729] 725. In a February 2021 email, Facebook's Chief Privacy Officer explained this history in an email to Facebook CEO Mark Zuckerberg: "[The Assessor has] disputed our original scope interpretation of the Order [redacted] After significant back and forth (including with FTC), we have agreed that the scope for Security controls [redacted][730] 726. In the same February 2021 email, Facebook's Chief Privacy Officer [redacted][731] 727. [redacted][732] [726] Ex. 4 at 120–22. [727] Ex. 3, Part VII.E.3.	[redacted] but omits that this is prior to commencement of the Order's requirement to establish a Privacy Program.[1612] ● Paragraph 723 wrongly suggests that, to the extent Meta [redacted] For example, prior to October 2020, Meta had already been [redacted][1613] ● They omit that Meta has continued to mature its systems by [redacted][1614] Meta has also created [redacted][1615] As of the 2023 Assessment Report, Meta had also implemented [redacted]

[1612] *See* Order, Part VII.A ("To satisfy this requirement, Respondent must, within 180 days of the effective date of this Order, at a minimum . . . .").

[1613] *See* Ex. 17 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 2) at 15.

[1614] *See* Ex. D (2023 Assessment Report) at 142.

[1615] *See id.* at 138.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[728] Ex. 22 (Feb. 24, 2021 email fr. M. Protti to M. Zuckerberg re FTC Assessment Update). [729] Ex. 22. [730] Ex. 22. [731] Ex. 22. [732] Ex. 4 at 114.	[redacted][1616] Moreover, the Assessor has acknowledged in the first biennial Assessment period that Meta has improved [redacted][1617] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations [redacted] described herein, or regarding the [redacted] While the Assessor noted the [redacted] the Assessor identified no actual harm to user privacy as a result of [redacted]

[1616] *See id.* at 143

[1617] *See id*.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1618] And as noted above, the Assessor noted up front that during the initial Assessment period, [redacted][1619]
Paragraphs 728–42 728. Facebook uses a service called CloudTrail to "capture logs of activity" occurring on cloud servers used by Facebook.[733] 729. Facebook also uses a service called GuardDuty to [redacted][734] 730. [redacted][735] 731. The Assessor, however, found that, [redacted][736] 732. Facebook admitted that, [redacted][737]	**Paragraphs 728–42** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to maintain any particular system of [redacted] "capture logs of activity" [redacted] By using [redacted] Meta affirmatively chose to implement processes beyond those specifically required by the Order. ● Paragraphs 731–34 wrongly imply that, because Meta did not [redacted]

[1618] Ex. 4 (2021 Assessment Report) at 114, 120.

[1619] *Id.* at 121.

Preliminary Findings of Fact (PFOF)	Response to PFOF
733. Facebook also admitted that, [redacted][738]	[redacted][1620] • Paragraphs 735–36 wrongly suggest that [redacted][1621] Paragraphs 735–36 also omit that [redacted] even as of the Order's effective date.[1622] • They omit that the Assessor has acknowledged that Meta remediated this issue [redacted][1623] For the reasons discussed above, these paragraphs also wrongly suggest that [redacted] Paragraphs 735–36 also wrongly imply that Meta's obligations under Part VII of the Order required it to [redacted] • They omit that Meta also subsequently remediated [redacted] The Assessor confirmed that [redacted]
734. [redacted][739]	
735. [redacted][740]	
736. [redacted][741]	
737. [redacted][742]	
738. [redacted][743]	
739. [redacted][744]	

[1620] Ex. 17 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 2) at 14.

[1621] *See id.* at 15.

[1622] *Id.*

[1623] *See* Ex. D (2023 Assessment Report) at 142.

Preliminary Findings of Fact (PFOF)	Response to PFOF
740. [redacted][745] 741. [redacted][746] 742. The Assessor found that [redacted][747] [733] Ex. 17 at 14 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 2). [734] Ex. 17 at 14 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 2). [735] Ex. 17 at 14 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 2). [736] Ex. 4 at 120–21. [737] Ex. 17 at 14 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 2). [738] Ex. 17 at 14 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 2). [739] Ex. 17 at 14 & n.27 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 2). [740] Ex. 17 at 14 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 2); Ex. 10 at 1–2 (Oct. 15, 2021 resp. to Aug. 19, 2021 request 2). [741] Ex. 10 at 2 (Oct. 15, 2021 resp. to Aug. 19, 2021 request 2). [742] Ex. 10 at 2 (Oct. 15, 2021 resp. to Aug. 19, 2021 request 2). [743] Ex. 10 at 2 (Oct. 15, 2021 resp. to Aug. 19, 2021 request 2).	[redacted][1624] The Assessor further confirmed that [redacted][1625] And for the [redacted][1626] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's [redacted] and the Assessor's own findings confirm the absence of any such harm. [redacted] discussed in Paragraphs 737–38, these paragraphs acknowledge that [redacted] Second, [redacted] These paragraphs also omit that [redacted][1627] To the extent

[1624] *Id.*

[1625] *Id.*

[1626] Ex. 17 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 2) at 15.

[1627] Ex. 10 (Oct. 15, 2021 resp. to Aug. 19, 2021 request 2) at 2.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[744] Ex. 10 at 2 (Oct. 15, 2021 resp. to Aug. 19, 2021 request 2). [745] Ex. 10 at 2 (Oct. 15, 2021 resp. to Aug. 19, 2021 request 2). [746] Ex. 10 at 2 (Oct. 15, 2021 resp. to Aug. 19, 2021 request 2). [747] Ex. 4 at 121.	these paragraphs purport to suggest that these [redacted] reflect an impact on users, it is inaccurate, as those results actually demonstrate [redacted]
Paragraphs 743–51 743. The Assessor identified [redacted] [748] 744. In particular, the Assessor [redacted] [749] 745. The Assessor also found [redacted] [750] 746. The Assessor found, [redacted] [751] 747. The Assessor found, [redacted] [752]	**Paragraphs 743–51** purport to describe certain Assessor observations about Meta's [redacted] as described in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● They wrongly imply that Meta's obligations under Part VII of the Order required it [redacted] ● They fail to note that the Assessor's observations were directed [redacted] ● Paragraph 743 wrongly states [redacted] The initial Assessment Report did not state that [redacted]

Preliminary Findings of Fact (PFOF)	Response to PFOF
748. Facebook admitted [redacted][753] 749. Additionally, the Assessor determined that [redacted][754] 750. [redacted][755] 751. The Assessor concluded: [redacted][756] [748] Ex. 4 at 121. [749] Ex. 4 at 121. [750] Ex. 23 ("[redacted]" tab, row 23). [751] Ex. 23 ("[redacted]" tab, row 23); Ex. 76 at 6 (Apr. 15, 2022 resp. to Mar. 17, 2022 (Set 11) request 1.d).	• They omit the Assessor's relevant observation in the initial Assessment Report [redacted][1628] • They omit the Assessor's relevant findings in the 2023 Assessment Report that [redacted][1629] • Paragraph 745 omits that Meta did in fact [redacted][1630] These paragraphs also omit that Meta nevertheless [redacted][1631] • Paragraph 746 omits that [redacted]

[1628] *See* Ex. 4 (2021 Assessment Report) at 121.

[1629] Ex. D (2023 Assessment Report) at 142.

[1630] Ex. 76 (Apr. 15, 2022 resp. to Mar. 17, 2022 Request 1.c) at 5–6.

[1631] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[752] Ex. 23 ("[redacted]" tab, row 22); Ex. 76 at 6 (Apr. 15, 2022 resp. to Mar. 17, 2022 (Set 11) request 1.e . [753] Ex. 17 at 17 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 4). [754] Ex. 4 at 121. [755] Ex. 17 at 16 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 4). [756] Ex. 4 at 121.	[redacted][1632] In addition, it omits that Meta subsequently updated [redacted][1633] Paragraph 746 also omits that the Assessor determined [redacted][1634] • Paragraph 747 incorrectly states that Facebook agreed that [redacted][1635] [redacted][1636] • Paragraph 747 also omits that [redacted]

[1632] *See* Ex. 76 (Apr. 15, 2022 resp. to Mar. 17, 2022 Request 1.d) at 6; Ex. 23 [redacted] tab, row 22).

[1633] Ex. 76 (Apr. 15, 2022 resp. to Mar. 17, 2022 Request 1.d) at 6.

[1634] *See supra* Section IV.G, Resp. to PFOF ¶¶ 708–20.

[1635] Ex. 76 (Apr. 15, 2022 resp. to Mar. 17, 2022 Request 1.d) at 6.

[1636] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1637] In addition, it omits that Meta subsequently updated [redacted][1638] This paragraph also fails to note, as it does in Paragraph 718, that [redacted] ● Paragraph 748 incorrectly states that Meta [redacted][1639] As already noted above, [redacted] is not a requirement under Part VII of the Order, nor does Part VII specify [redacted][1640]

[1637] *See* Ex. 23 ([redacted] tab, row 22); *see also* Ex. 76 (Apr. 15, 2022 resp. to Mar. 17, 2022 Request 1.e at 6.

[1638] Ex. 76 (Apr. 15, 2022 resp. to Mar. 17, 2022 Request 1.e at 6.

[1639] Ex. 17 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 4) at 16.

[1640] *See supra* Section IV.G, Resp. to PFOF ¶¶ 708–20.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	• Paragraphs 750–51 wrongly suggests that Meta's [redacted][1641] It also wrongly implies that Meta's obligations under Part VII of the Order require [redacted] • They omit that Meta has continued to mature its processes [redacted][1642] • They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] described herein, insofar as Paragraph 751 suggests that [redacted] The Assessor noted up front that [redacted][1643] Paragraph 748 omits that the Assessor [redacted]

[1641] *See* Ex. 17 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 4) at 17 [redacted].

[1642] *See supra* Section IV.G, Resp. to PFOF ¶¶ 721–27.

[1643] Ex. 4 (2021 Assessment Report) at 121.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted] and that Meta employed a number of compensating controls to minimize such risks, as detailed in its Part XV responses.[1644]
Paragraphs 752–55 752. [redacted][757] 753. As a result, the Assessor reported, [redacted][758] 754. The Assessor concluded [redacted] 755. The Assessor [redacted][760] [757] Ex. 4 at 121.	**Paragraphs 752–55** purport to describe certain Assessor observations about [redacted], as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Paragraph 752–55 wrongly imply that the cited findings related to obligations under Part VII of the Order. In designing and implementing [redacted] Meta affirmatively chose to implement safeguards beyond those specifically required by the Order. Moreover, these paragraphs are also wrong to the extent they imply [redacted] ● They omit the Assessor's relevant observations in the initial Assessment Report that [redacted][1645] ● They omit that a number of Meta's

[1644] Ex. 17 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 3–4) at 16–17.

[1645] Ex. 4 (2021 Assessment Report) at 118, 121.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[758] Ex. 4 at 121; Ex. 17 at 16 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 5). [759] Ex. 4 at 121. [760] Ex. 4 at 121.	processes at the time of the initial Assessment already [redacted] For example, Meta noted that [redacted] [1646] These paragraphs also omit important context previously provided to the Commission regarding [redacted] [1647] ● Paragraph 755 omits the Assessor's relevant observation that Meta has since created [redacted] [1648] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein. In particular, Paragraphs 754–55 omit relevant information previously provided to the Commission demonstrating that: [redacted]

[1646] *See* Ex. 17 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 5) at 18.

[1647] *See id.*

[1648] *See supra* Section IV.G, Resp. to PFOF ¶¶ 721–27.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1649] The 2023 Assessment Report also recognized that Meta [redacted] These enhancements include implementing [redacted][1650]
Paragraphs 756–58 756. The Assessor observed that [redacted][761] 757. In particular, the Assessor found [redacted][762] 758. The Assessor added that [redacted]	**Paragraphs 756–58** purport to describe certain Assessor observations about Meta's [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Paragraphs 756–58 wrongly imply that Meta's obligations under Part VII required it [redacted] ● To the extent that any theoretical or potential impact was identified by the Assessor, it has been remediated

[1649] Ex. 17 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 5) at 17.

[1650] *See* Ex. D (2023 Assessment Report) at 146–47.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][763] [761] Ex. 4 at 121–22. [762] Ex. 4 at 122. [763] Ex. 4 at 122.	through the maturation process described herein. Meta has [redacted][1651] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] The Assessor provided no basis for its claim that [redacted][1652]
H. Training, Awareness & Communications (¶¶ 759–869)	
Paragraphs 759–61 759. Part VII.G of the 2020 Order requires Facebook to "[e]stablish regular privacy training programs for all employees on at least an annual basis, updated to address any internal or external risks identified . . . and safeguards implemented . . . that includes training on the requirements of this Order."[764] 760. In response to Part VII.G., Facebook's	**Paragraphs 759–61** purport to set forth the scope of Meta's Training Awareness and Communication Domain created in response to Part VII.G. of the Order, as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● They omit that Order Part VII.G's requirement to "[e]stablish" training

[1651] *See id.* at 143.

[1652] *See* Ex. 4 (2021 Assessment Report) at 121–22. As such, Paragraph 758 relies on speculation, and is not otherwise grounded in observed facts.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted] developed an Annual Privacy Training Program and a New Hire Privacy Training Program to provide "foundational training on the Order's requirements, as well as appropriate privacy practices and privacy-related expectations and commitments" to all its personnel.[765] 761. Facebook also conducts some role-based Privacy Training [redacted][766] *** [764] Ex. 3, Part VII.G. [765] Ex. 4 at 26. [766] Ex. 4 at 27.	programs does not require Meta to ensure that 100% of all employees, much less all Meta personnel, complete the required training.[1653] ● They oversimplify and omit major segments of Meta's comprehensive approach relating to the Training, Awareness, and Communication domain and compliance with Part VII. For instance, in addition to establishing the Annual and New Hire Privacy Training Program, Meta's Training, Awareness, and Communication domain also [redacted][1654] ● They do not include facts available to the Commission about how Meta's privacy training programs exceed the requirements of Part VII.G of the Order. Meta not only established an annual training program for employees, consistent with the Order, but extended that program to all other Meta personnel, including contingent workers (i.e., vendors) and those with [redacted][1655]

[1653] *See* Order, Part VII.G.

[1654] *See* Ex. D (2023 Assessment Report) at 38.

[1655] *See* Ex. 30 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 2) at 3–4.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1656] [redacted][1657] [redacted][1658] [redacted][1659] ● They omit that Meta's New Hire Privacy Training Program—again required for all new Meta personnel, beyond employees—and Meta's role-based training initiatives also exceed the requirements under Part VII.G of the Order.[1660] ● They omit that the Assessor specifically found that [redacted][1661] ● They fail to mention that the Assessor [redacted][1662] Additionally,

[1656] *See* Ex. 30 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 1) at 9 n.7.

[1657] *Id.*

[1658] *Id.*

[1659] *See id.* at 9 n.5.

[1660] *See* Order, Part VII.G; Ex. 30 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 4) at 4–5; Ex. 30 (Jan. 21, 2022 resp. to Dec. 2, 2021 requests 7 and 8) at 5–6.

[1661] *See* Ex. 4 (2021 Assessment Report) at 28.

[1662] *See* Ex. D (2023 Assessment Report) at 9.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	Meta's Annual Privacy Training for 2022 received two different awards, a Hermes award and a Telly award.[1663] Meta was also featured in the Wall Street Journal because of its "novel" training program that "quickly exceeded the compliance department's expectations" in sparking a high level of engagement from Meta's workforce.[1664] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding the scope of Meta's Training Awareness and Communication Domain created in response to Part VII.G. of the Order described herein.[1665]
Paragraphs 762–70 762. According to the Assessor, on [redacted], 2020, Facebook deployed its first Annual Privacy Training to all existing personnel [redacted][767] 763. The Assessor stated that, [redacted][768]	**Paragraphs 762–70** purport to describe certain Assessor observations about Meta's 2020 Annual Privacy Training as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to develop and adhere [redacted] relating to the Annual Privacy Training. In doing so, Meta chose to implement safeguards and processes beyond those

[1663] *See* Winners - Hermes Creative Awards (amcpros.com) (Hermes award winners); Meta Annual Mandatory Training 2022 (tellyawards.com (Telly award winners .

[1664] *See* How Meta Uses Netflix-Style Videos to Get Engineers Thinking About Compliance - WSJ (Wall Street Journal article titled "How Meta Uses Netflix-Style Videos to Get Engineers Thinking About Compliance").

[1665] *See* Ex. 4 (2021 Assessment Report) at 26–30.

Preliminary Findings of Fact (PFOF)	Response to PFOF
764. The Assessor also stated that Facebook personnel were expected to complete the 2020 Annual Privacy Training within [redacted] days.[769] 765. According to the Assessor, [redacted][770] 766. [redacted].[771] 767. However, not all of Facebook's personnel timely completed the privacy trainings in 2020.[772] 768. As of April 5, 2021—nearly a year after the 2020 Annual Privacy Training was deployed—[redacted] Facebook personnel out of [redacted] (approximately [redacted]%) had not completed the 2020 Annual Privacy Training.[773] 769. [redacted][774] 770. [redacted][775] ***	specifically required by the Order. ● They fail to provide additional context that Meta had a [redacted] completion rate for the First Annual Privacy Training.[1666] They also fail to provide the additional context that [redacted][1667] ● They omit that, as of October 24, 2020, over [redacted] Meta personnel had completed the Annual Privacy Training.[1668] ● They omit that as of the end of the initial Assessment period on April 22, 2021, [redacted] of eligible Meta personnel had completed the 2020 Annual Privacy Training.[1669] The Commission's preliminary factual findings also omit that as of January 13, 2022, the completion rate for the 2020 Annual Privacy Training had [redacted][1670] ● They omit that as of January 13, 2022, [redacted]

[1666] *See* Ex. 73 (Apr. 29, 2022 resp. to Mar. 17, 2022 request 1) at 14.

[1667] *See id.* at 14–15.

[1668] *See* Ex. 11 (Oct. 24, 2020 Compliance Report) at 9.

[1669] *See* Ex. 30 (Jan. 21, 2022 resp. to December 2, 2021 request 1) at 9.

[1670] *See id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[767] Ex. 4 at 26. [768] Ex. 4 at 26. [769] Ex. 4 at 26. [770] Ex. 4 at 26. [771] Ex. 4 at 26. [772] Ex. 4 at 29; Ex. 30 at 9–10 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 1). [773] Ex. 4 at 29; Ex. 30 at 9 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 1) (Facebook "agrees with the cited portion of the Assessment to the extent that the figures regarding completion of the First Annual Privacy Training listed in the assessment were accurate as of April 25, 2021."). [774] Ex[.] 4 at 29. [775] Ex. 4 at 29 n.6.	[redacted][1671] Further, these paragraphs specifically omit that, of the [redacted][1672] [redacted][1673] • They omit that, [redacted] as of January 13, 2022, [redacted][1674] [redacted][1675] [redacted]

[1671] *See id.*

[1672] *See id.*

[1673] *See id.* at 9 n.5.

[1674] *See id.* at 10.

[1675] *See id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1676] ● They fail to provide additional context around the [redacted] As noted above, [redacted][1677] As of March 24, 2022, [redacted][1678] [redacted][1679] [redacted][1680] [redacted][1681] As such, Meta had a [redacted] completion rate for the First Annual Privacy Training and [redacted][1682] ● They fail to clarify that neither the Commission nor the Assessor has

[1676] *See id.*

[1677] *See id.*

[1678] *See* Ex. 73 (Apr. 29, 2022 resp. to Mar. 17, 2022 request 1) at 15.

[1679] *See id.*

[1680] *See id.*

[1681] *See id.*

[1682] *See id.* at 14–15.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	identified any harm to or impact on users regarding Meta's 2020 Annual Privacy Training described herein.[1683]
Paragraphs 771–76 771. According to the Assessor, Facebook deployed new hire privacy training for all personnel hired [redacted] 2020.[776] 772. The Assessor stated that Facebook's new hires have 30 days from their date of assignment to complete the New Hire Privacy Training.[777] 773. [redacted] 2021, [redacted] Facebook new hires who were supposed to complete the new hire privacy training between [redacted] 2021, and [redacted] 2021, had yet to complete it.[778] 774. Out of the [redacted] individuals enrolled in the New Hire Privacy Training between June 8, 2020, and December 31, 2020, with a due date on or before December 31, 2020, [redacted] personnel (approximately [redacted]%) did not complete the training as of January 30, 2021.[779] 775. [redacted][780] 776. [redacted]	**Paragraphs 771–76** purport to describe certain Assessor observations about Meta's 2020 New Hire Privacy Training as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to [redacted] to the New Hire Privacy Training.[1684] In doing so, Meta chose to implement safeguards and processes beyond those specifically required by the Order. ● They note in Paragraph 772 that new hires have 30 days from their date of assignment to complete the New Hire Privacy Training, when new hires [redacted] to complete the New Hire Privacy Training.[1685] ● They note in Paragraph 773 that as of [redacted] when it should say as of [redacted][1686] ● They omit that [redacted] of learners [redacted] employees) assigned the New Hire Privacy Training between June 8, 2020 and December 31, 2020

[1683] *See* Ex. 4 (2021 Assessment Report) at 26–30.

[1684] *See* Order, Part VII.

[1685] *See* Ex. 4 (2021 Assessment Report) at 27.

[1686] *See id.* at 29.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][781] *** [776] Ex. 4 at 27. [777] Ex. 30 at 10 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 3); *see also* Ex. 4 at 27 ("New hires have 30 days from their hire date to complete the New Hire Privacy Training."). [778] Ex. 4 at 29. [779] Ex. 4 at 29; Ex. 30 at 10 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 3) (Facebook "agrees with the cited portion of the Assessment to the extent that the figures regarding completion of the New Hire Privacy Training listed in the Assessment were accurate as of January 30, 2021"). [780] Ex. 4 at 29. [781] Ex. 4 at 29.	completed the New Hire Privacy Training as of January 30, 2021.[1687] As of January 13, 2022, only [redacted] learners remained past due, none of whom were Meta employees.[1688] All [redacted][1689] As such, [redacted] of Meta personnel eligible for new hire training had completed that training as of January 13, 2022.[1690] ● They omit that the Assessor specifically found that [redacted][1691] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding Meta's 2020 New Hire Privacy Training described herein.[1692]
Paragraphs 777–85 777. The Assessor found that [redacted][782]	**Paragraphs 777–85** purport to describe certain Assessor observations about Meta's [redacted] based on findings from the first six months of the Program's operation as reflected in the initial Assessment Report.

[1687] *See* Ex. 30 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 3) at 10.

[1688] *See id.*

[1689] *See id.*

[1690] *See id.*

[1691] *See* Ex. 4 (2021 Assessment Report) at 28 (emphasis added).

[1692] *See id.* at 26–30.

Preliminary Findings of Fact (PFOF)	Response to PFOF
778. [redacted][783] 779. [redacted][784] 780. The Assessor observed that [redacted][785] 781. [redacted][786] 782. [redacted][787] 783. [redacted]	These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to [redacted][1693] In doing so, Meta chose to implement safeguards and processes beyond those specifically required by the Order. ● They do not discuss that [redacted][1694] Additionally, they fail to discuss [redacted][1695] For example, [redacted][1696] Further, [redacted]

[1693] *See* Order, Part VII.

[1694] *See* Ex. 30 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 6) at 11.

[1695] *See* PFOF ¶ 782.

[1696] *See* Ex. 30 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 6) at 11.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][788] 784. The Assessor found [redacted][789] 785. The Assessor determined that [redacted][790] *** [782] Ex. 4 at 29. [783] Ex. 4 at 29. [784] Ex. 4 at 29. [785] Ex. 4 at 29. [786] Ex. 4 at 29. [787] Ex. 4 at 29. [788] Ex. 4 at 29. [789] Ex. 4 at 29. [790] Ex. 4 at 30.	[redacted][1697] ● They do not discuss that ultimately, as of [redacted][1698] ● They omit that the Assessor's findings regarding [redacted][1699] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] described herein.[1700]
Paragraphs 786–92	**Paragraphs 786–92** purport to describe certain Assessor observations about Meta's

[1697] *See id.*

[1698] *See id.*

[1699] *See* Ex. 30 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 1) at 9–10; Ex. 73 (Apr. 29, 2022 resp. to March 17, 2022 request 1) at 14.

[1700] *See* Ex. 4 (2021 Assessment Report) at 28–30.

Preliminary Findings of Fact (PFOF)	Response to PFOF
786. The Assessor found that [redacted][791]	role-based privacy training initiatives based on findings from the first six months of the Program's operation as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to provide any training beyond the Annual Privacy Training and New Hire Training.[1701] As a result, Part VII of the Order does not require Meta to develop a role-based training program, let alone one that is centrally monitored.[1702] In offering training beyond Annual Privacy Training and New Hire Training, Meta affirmatively chose to implement safeguards beyond those specifically required by the Order. ● Paragraph 792 fails to note that, [redacted][1703] Further, the
787. The Assessor concluded that [redacted][792]	
788. The Assessor further noted that, [redacted][793]	
789. The Assessor recommended that, [redacted]	

[1701] *See* Order, Part VII.

[1702] *See id.*

[1703] *See* Ex. 7 (Dec. 3, 2021 resp. to Aug. 27, 2021 request 10) at 28–29.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][794] 790. Facebook acknowledged that "role-based trainings were typically managed by individual teams and not always centrally tracked or enforced."[795] 791. Facebook has stated that, during the Assessment Period, it provided formal and informal training to key personnel involved in the Privacy Review process, including Privacy Program Managers and Product Managers.[796] 792. Facebook has also acknowledged [redacted][797] *** [791] Ex. 4 at 29. [792] Ex. 4 at 30. [793] Ex. 4 at 30. [794] Ex. 4 at 30. [795] Ex. 30 at 5 (Jan. 21, 2022 resp. to Dec. 2, 2021 requests 7 and 8). [796] Ex. 30 at 5 (Jan. 21, 2022 resp. to Dec. 2, 2021 requests 7 and 8). [797] Ex. 7 at 28 (Dec. 3, 2021 resp. to Oct. 1, 2021 request 10).	[redacted][1704] ● They misleadingly omit [redacted][1705] ● They fail to discuss material facts regarding Meta's role-based trainings known to the Commission, including that: ○ During the initial Assessment period, Meta provided [redacted]

[1704] *See id.*

[1705] *See id.* at 30–31.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1706] ● Since the initial Assessment period, Meta has offered [redacted][1707] ● Since the initial Assessment period, Meta developed [redacted][1708] ● They omit Meta's relevant remediation efforts. In the initial Assessment Report, the Assessor previewed that Meta [redacted][1709] Then, following the June 2021 Assessment Report, Meta implemented [redacted]

[1706] *See* Ex. 30 (Jan 21, 2022 resp. to Dec. 2. 2021 requests 7 and 8) at 5.

[1707] *See* Ex. 7 (Dec. 3, 2021 resp. to Oct. 1, 2021 request 10) at 28.

[1708] *See* Ex. 30 (Jan 21, 2022 resp. to Dec. 2. 2021 requests 7 and 8) at 5.

[1709] *See* Ex. 4 (2021 Assessment Report) at 30.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1710] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding Meta's role-based privacy training initiatives described herein.[1711]
Paragraphs 793–99 793. [redacted] the Assessor observed there were [redacted][798] 794. The Assessor found that [redacted][799]	**Paragraphs 793–99** purport to describe certain Assessor observations [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to [redacted][1712] ● They do not specify that [redacted][1713] ● They fail to mention that the Assessor made [redacted]

[1710] *See* Ex. 30 (Jan 21, 2022 resp. to Dec. 2. 2021 requests 7 and 8) at 6; Ex. D (2023 Assessment Report) at 39–40.

[1711] *See* Ex. 4 (2021 Assessment Report) at 30.

[1712] *See* Order, Part VII.

[1713] *See* Ex. 4 (2021 Assessment Report) at 160 (discussing the S12 Ops training in the context of the Third-Party Risk Management domain).

Preliminary Findings of Fact (PFOF)	Response to PFOF
795. [redacted][800] 796. The Assessor found [redacted].[801] 797. [redacted][802] 798. [redacted][803] 799. [redacted][804] *** [798] Ex. 4 at 160. [799] Ex. 4 at 160. [800] Ex. 4 at 160. [801] Ex. 4 at 160. [802] Ex. 4 at 160.	[redacted][1714] Similarly, they fail to mention that the Assessor made [redacted][1715] The Commission [redacted][1716] ● As Paragraphs 795 and 797 recognize, [redacted][717] ● They fail to note in Paragraph 798 that [redacted] They also omit that the Assessor recognized that by the end of the initial six-month Assessment, [redacted][1719] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations [redacted]

[1714] *See id.*

[1715] *See id.*

[1716] *See id.*

[1717] *See id.*

[1718] *See id.*

[1719] *See id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[803] Ex. 4 at 160. [804] Ex. 4 at 160. [redacted]	[redacted] described herein.[1720]
Paragraphs 800–13 800. Even as of January 13, 2022, [redacted] Facebook personnel had still not completed the 2020 Annual Training [redacted].[805] 801. In its January 21, 2022, response, Facebook stated that, out of the [redacted] personnel who did not complete the 2020 Annual Training as of January 13, 2022, [redacted] did not have access to Meta Intern System Access systems because they were associated with an entity whose acquisition remained in a pending state as of January 21, 2022.[806] 802. In its January 21, 2022, response, Facebook stated that, out of the [redacted] personnel who did not complete the 2020 Annual Training as of January 13, 2022 and were associated with an entity whose acquisition was not in a pending state, [redacted] were Contingent Workers.[807] 803. In its January 21, 2022, response, Facebook stated that, of the [redacted] Contingent Workers who did not complete the 2020 Annual Training as of January 13, 2022 and were not associated with an entity whose acquisition was in a pending state, [redacted] had access to Meta Intern System Access and [redacted] completed the 2021	**Paragraphs 800–13** purport to set forth the details of updated completion rates for the 2020 Annual Privacy Training as of January 13, 2022. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● They are inaccurate and misleading for the reasons set forth in Meta's response to Paragraphs 762–70.[1721] ● In Paragraph 801, the following reference—"in a pending state as of January 21, 2022"—should be "as of January 13, 2022."[1722] ● In Paragraph 811, they fail to note that [redacted][1723] ● In Paragraph 813, they fail to note that [redacted]

[1720] *See id.*

[1721] *See supra* Section IV.H, Resp. to PFOF ¶¶ 762–70.

[1722] *See* Ex. 30 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 1) at 9.

[1723] *See* Ex. 73 (Apr. 29, 2022 resp. to Mar. 17, 2022 request 1) at 15.

Preliminary Findings of Fact (PFOF)	Response to PFOF
Annual Privacy Training.[808] 804. In its April 29, 2022, response, Facebook stated that the [redacted] Contingent Workers who did not complete the 2020 Annual Training also failed to timely complete the 2021 Annual Privacy Training and were deprovisioned.[809] 805. In its April 29, 2022, response, Facebook stated, out of the [redacted] Contingent Workers who did not complete the 2020 Annual Training, [redacted] of them "likely had access to Covered Information as part of their job responsibilities."[810] 806. In its April 29, 2022, response, Facebook stated [redacted][811] 807. In its January 21, 2022, response, Facebook stated that, out of the [redacted] remaining personnel who did not complete the 2020 Annual Training as of January 13, 2022 and were associated with an entity whose acquisition was not in a pending state, [redacted] were full-time employees and had access to Facebook Intern System Access.[812] 808. In its April 29, 2022, response, Facebook stated that, out of those [redacted] full-time employees, [redacted] were on leaves of absence during the training compliance period, so Facebook extended their completion deadlines for the 2020 Annual Training.[813]	[redacted][724] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding updated completion rates for the 2020 Annual Privacy Training as of January 13, 2022 described herein.[1725]

[1724] *See id.* at 16.

[1725] *See* Ex. 4 (2021 Assessment Report) at 28–29; Ex. 30 (Jan. 21, 2022 resp. to Dec. 2, 2021 requests 1 and 3) at 9–10; Ex. 73 (Apr. 29, 2022 resp. to March 17, 2022 requests 1 and 2) at 14–16.

Preliminary Findings of Fact (PFOF)	Response to PFOF
809. In its April 29, 2022, response, Facebook stated that the remaining full-time employee who did not complete the 2020 Annual Training and who was not on a leave of absence "worked as an [redacted] in a [Facebook] office in [redacted] and was unlikely to have access to Covered Information as part of their job responsibilities," [redacted][814]	
810. In its April 29, 2022 response, Facebook stated that the manager and the Employee Relations contact for the full-time employee who did not complete the 2020 Annual Training received notifications that the employee had not completed the 2020 Annual Privacy Training.[815]	
811. In its April 29, 2022 response, Facebook stated [redacted][816]	
812. In its January 21, 2022 response, Facebook stated [redacted][817]	
813. In its April 29, 2022 response, Facebook stated, of those [redacted] Contingent Workers who were past due for the New Hire Privacy Training, [redacted] of them "likely had access to Covered Information as part of their job responsibilities;"[818] [redacted][819]	

Preliminary Findings of Fact (PFOF)	Response to PFOF
*** [805] Ex. 30 at 9, 12–17 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 1) (chart listing the [redacted] employees who did not complete the 2020 Annual Training by January 13, 2022). [806] Ex. 30 at 9 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 1). [807] Ex. 30 at 9 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 1). [808] Ex. 30 at 9 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 1); Ex. 73 at 14 (Apr. 29, 2022 resp. to Second Mar. 17, 2022 request 1). [809] Ex. 73 at 15 (Apr. 29, 2022 resp. to Second Mar. 17, 2022 request 1). [810] Ex. 73 at 15 (Apr. 29, 2022 resp. to Second Mar. 17, 2022 request 1). [811] Ex. 73 at 15 (Apr. 29, 2022 resp. to Second Mar. 17, 2022 request 1). [812] Ex. 30 at 10 (Jan. 21, 2022 resp. to Dec. 2, 2021, request 1). [813] Ex. 73 at 15 (Apr. 29, 2022 resp. to Second Mar. 17, 2022 request 1). [814] Ex. 73 at 15 (Apr. 29, 2022 resp. to Second Mar. 17, 2022 request 1). [815] Ex. 73 at 15 (Apr. 29, 2022 resp. to Second Mar. 17, 2022 request 1). [816] Ex. 73 at 15 (Apr. 29, 2022 resp. to Second Mar. 17, 2022 request 1). [817] Ex. 30 at 10 and 18–25 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 3) (chart listing the [redacted] new hires past due for the new hire privacy training as of January 13, 2022). [818] Ex. 73 at 16 (Apr. 29, 2022 resp. to Second Mar. 17, 2022 request 2). [819] Ex. 73 at 16 (Apr. 29, 2022 resp. to Second Mar. 17, 2022 request 2).	
Paragraphs 814–57 814. On September 28, 2021, Facebook deployed the 2021 Annual Privacy Training to the entire company.[820] 815. All Company "learners" were required to complete the 2021 Annual Privacy Training by November 29, 2021.[821] 816. [redacted]	**Paragraphs 814–57** purport to set forth the details of [redacted] between the end of the initial, six-month Assessment in April 2021 and April 2022. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● In Paragraph 817 they say

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][822] 817. [redacted][823] 818. [redacted][824] and [redacted][825] 819. [redacted][826] 820. According to Facebook, [redacted]: 821. [redacted][827] 822. [redacted]	[redacted][1726] *With respect to the 2021 Annual Privacy Training:* ● They fail to include material facts in Paragraph 818 relating to the [redacted][1727] ● They fail to include additional details on [redacted]

[1726] *See* Ex. 30 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 2) at 3.

[1727] *See id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][828] 823. [redacted][829] 824. According to Facebook, [redacted]: 825. [redacted][830] 826. [redacted][831] and 827. [redacted][832].	[redacted][1728] ● They fail to include additional details on [redacted] in Paragraphs 823 to 827. For example, they fail to note in Paragraph 825 that [redacted][1729] In Paragraph 827, they fail to note that [redacted][1730] They fail to note that [redacted][1731] ● They fail to note in Paragraph 830 that Meta achieved a completion rate for the 2021 Annual Privacy Training of [redacted] across [redacted] Meta personnel.[1732] ● They fail to note in Paragraphs 833–37 that as of March 24, 2022, [redacted] of personnel had completed the 2021 Annual Privacy Training, with [redacted]

[1728] *See id*.

[1729] *See id.* at 6.

[1730] *See id.*

[1731] *See id.*

[1732] *See* Ex. 73 (Apr. 29, 2022 resp. to March 24, 2022 request 8) at 18.

Preliminary Findings of Fact (PFOF)	Response to PFOF
828. Facebook defines "Facebook Intern System Access" as access to the Company's internal systems, websites, and tools.[833] Facebook personnel are provisioned different levels of access to Facebook's internal systems based on the needs of their position or contract at any time.[834] 829. Access to Facebook Intern System Access may also provide access to Covered Information.[835] 830. In its April 29, 2022, response, Facebook stated that, between January 21, 2022 and March 24, 2022, Facebook identified [redacted] "learners" as past due for the 2021 Annual Privacy Training.[836] 831. In its April 29, 2022, response, Facebook stated that, of the [redacted] "learners" who did not complete the 2021 Annual Privacy Training by January 21, 2022, [redacted] were full-time employees and [redacted] were Contingent Workers.[837] 832. In its April 29, 2022, response, Facebook stated [redacted][838] 833. In its April 29, 2022, response, Facebook stated that, of the [redacted] past-due "learners," [redacted] completed the 2021 Annual Privacy Training between January 22, 2022, and March 24, 2022, leaving [redacted] learners who did not complete the 2021	[redacted] not having completed the training.[1733] These [redacted][1734] • They note in Paragraph 837 that one "of these [redacted] Contingent Workers who were past due on the 2021 Annual Privacy Training" when it should be [redacted] Contingent workers (not [redacted].[1735] • They fail to note in Paragraph 838 that [redacted][1736] As such, [redacted][1737] *With respect to the New Hire Privacy Training:* • They fail to note additional detail relating to the [redacted], described in Paragraphs 841

[1733] *See id*. at 19.

[1734] *See id.*

[1735] *See id.*

[1736] *See id.*

[1737] *See id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
Annual Privacy Training by March 24, 2022.[839] 834. In its April 29, 2022, response, Facebook stated that, of the [redacted] learners who were past due on the 2021 Annual Privacy Training as of March 24, 2022, [redacted] are full-time employees with Facebook Intern System Access on a leave of absence during the pendency of the 2021 Annual Privacy Training.[840] 835. In its April 29, 2022, response, Facebook stated, of the [redacted] full-time employees who had Facebook Intern System Access and who were on a leave of absence during the pendency of the 2021 Annual Privacy Training, [redacted] employees "likely had access to Covered Information as part of their job responsibilities; [redacted][841] 836. In its April 29, 2022, response, Facebook stated that, of the [redacted] learners who were past due on the 2021 Annual Privacy Training as of March 24, 2022, [redacted] are Contingent Workers, [redacted] of whom have Facebook Intern System Access.[842] 837. [redacted] of these [redacted] Contingent Workers who were past due on the 2021 Annual Privacy Training [redacted] and "likely had access to Covered Information as part of their job responsibilities;" Facebook granted this Contingent Worker an extension due to a	and 842. Specifically, [redacted][1738] ● They omit information relating to the [redacted] in Paragraph 844, including that [redacted][1739] [redacted][1740] ● They fail to note in Paragraphs 850 and 851 that Meta hired [redacted] employees and onboarded [redacted] Contingent Workers between January 13, 2022 and March 24, 2022, which provides additional context around the number of past-due learners between January 13, 2022 and March 24, 2022.[1741] Further, they fail to discuss that [redacted]

[1738] *See* Ex. 30 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 4) at 4.

[1739] *See id.*

[1740] *See id.* at 4–5.

[1741] *See* Ex. 73 (Apr. 29, 2022 resp. to March 24, 2022 request 9) at 19–20.

Preliminary Findings of Fact (PFOF)	Response to PFOF
leave of absence.[843] 838. In its April 29, 2022, response, Facebook stated [redacted][844] 839. As of November 8, 2021, Facebook reported that it had set up a [redacted] to ensure that new hires complete the New Hire Privacy training.[845] 840. [redacted], Facebook reported that [redacted][846] 841. [redacted][847] 842. [redacted][848] 843. [redacted]	[redacted][1742][1743][1744][1745] ● They fail to note in Paragraph 853 that although [redacted] learners were past due for the New Hire Privacy Training as of March 24, 2022, [redacted] of those learners [redacted][1746] ● They fail to note in Paragraph 854, or provide additional context, that [redacted]

[1742] *See id.* at 20.

[1743] *See id.*

[1744] *See id.*

[1745] *See id.*

[1746] *See id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][849]	[redacted][1747]
844. Facebook reported on [redacted][850]	• They fail to note in Paragraph 857 that [redacted][1748] They also fail to note the aforementioned [redacted][1749]
845. [redacted][851]	• They omit that the Assessor recognized in its 2023 Assessment Report that [redacted][1750] Specifically, Meta enhanced [redacted]
846. Facebook reported that [redacted][852]	
847. Facebook also reported that [redacted][853]	
848. Facebook also reported that [redacted]	

[1747] *See id.*

[1748] *See id.*

[1749] *See* Ex. 30 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 4) at 4–5.

[1750] Ex. D (2023 Assessment Report) at 42.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][854] 849. Additionally, Facebook stated [redacted][855] 850. In its April 29, 2022, response, Facebook stated that, during the period from January 13, 2022, to March 24, 2022, [redacted] personnel were marked as one or more days past due for the New Hire Privacy Training.[856] 851. In its April 29, 2022, response, Facebook stated that, of the [redacted] personnel past due for the New Hire Privacy Training, [redacted] are full-time employees and [redacted] are Contingent Workers.[857] 852. In its April 29, 2022, response, Facebook stated that, as of March 24, 2022, [redacted] personnel [redacted] full-time and [redacted] Contingent Workers) remain past due on the New Hire Privacy Training.[858] 853. In its April 29, 2022, response, Facebook stated that, of the [redacted] past due on the New Hire Privacy Training as of March 24, 2022, [redacted] have Facebook Intern System Access—[redacted] of which are full-time employees and [redacted] are Contingent Workers.[859]	[redacted][1751] [redacted][1752] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations [redacted] between the end of the initial, six-month Assessment in April 2021 and April 2022 described herein.[1753]

[1751] *See id.* at 42–43.

[1752] *See id.*

[1753] *See id.*; Ex. 30 (Jan. 21, 2022 resp. to Dec. 2, 2021 requests 2 and 4) at 3–4; Ex. 73 (Apr. 29, 2022 resp. to March 24, 2022 requests 8 and 9) at 17–29.

Preliminary Findings of Fact (PFOF)	Response to PFOF
854. In its April 29, 2022, response, Facebook stated that, of the [redacted] full-time employees who were past due on the New Hire Privacy Training, [redacted][860]	
855. In its April 29, 2022, response, Facebook stated that, of the [redacted] Contingent Workers who were past due on the New Hire Privacy Training, [redacted] "likely had access to Covered Information as part of their job responsibilities": 2 [redacted][861]	
856. In its April 29, 2022, response, Facebook stated that, of those [redacted] Contingent Workers who "likely" had access to Covered Information, "[redacted] remain active and have since taken the New Hire Training" and [redacted] "is no longer a Contingent Worker" at Facebook.[862]	
857. Facebook Intern System Access is revoked for all learners [redacted][863]	
***	
[820] Ex. 30 at 3 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 2). [821] Ex. 30 at 3 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 2). [822] Ex. 30 at 3 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 2). [823] Ex. 30 at 3 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 2). [824] Ex. 30 at 3 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 2). [825] Ex. 30 at 3 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 2).	

Preliminary Findings of Fact (PFOF)	Response to PFOF
[826] Ex. 30 at 3 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 2). [827] Ex. 30 at 3 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 2). [828] Ex. 30 at 3 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 2). [829] Ex. 30 at 3 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 2). [830] Ex. 30 at 4 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 2). [831] Ex. 30 at 4 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 2). [832] Ex. 30 at 4 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 2). [833] Ex. 30 at 9 n.7 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 1). [834] Ex. 30 at 9 n.7 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 1). [835] Ex. 30 at 9 n.7 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 1). [836] Ex. 73 at 18 (Apr. 29, 2022 resp. to Mar. 24, 2022, request 8). [837] Ex. 73 at 18 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 8). [838] Ex. 73 at 19 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 8). [839] Ex. 73 at 18 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 8), 23–25 [redacted] . [840] Ex. 73 at 19 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 8). [841] Ex. 73 at 19 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 8). [842] Ex. 73 at 19 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 8). [843] Ex. 73 at 19 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 8). [844] Ex. 73 at 19 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 8). [845] Ex. 30 at 4 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 4). [846] Ex. 30 at 4 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 4). [847] Ex. 30 at 4 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 4). [848] Ex. 30 at 4 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 4). [849] Ex. 30 at 4 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 4). [850] Ex. 30 at 4 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 4).	

Preliminary Findings of Fact (PFOF)	Response to PFOF
[851] Ex. 30 at 5 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 4). [852] Ex. 30 at 5 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 4). [853] Ex. 30 at 5 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 4). [854] Ex. 30 at 5 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 4). [855] Ex. 30 at 5 (Jan. 21, 2022 resp. to Dec. 2, 2021 request 4). [856] Ex. 73 at 19 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 9). [857] Ex. 73 at 19 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 9). [858] Ex. 73 at 20 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 9). [859] Ex. 73 at 20 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 9), 26–29 [redacted] [860] Ex. 73 at 20 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 9). [861] Ex. 73 at 20 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 9). [862] Ex. 73 at 20 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 9). [863] Ex. 73 at 20 (Apr. 29, 2022 resp. to Mar. 24, 2022 request 9).	
Paragraphs 858–69 858. [redacted][864] 859. [redacted]"[865]	**Paragraphs 858–69** purport to set forth the details of changes Meta made to its role-based privacy training. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● They fail to include certain relevant information in Paragraph 861 relating [redacted] For example, they fail to note that Meta maintains [redacted]

Preliminary Findings of Fact (PFOF)	Response to PFOF
860. Since the Assessment, Facebook has introduced additional role-based training, including a training entitled [redacted]»[866] 861. [redacted][867] 862. Facebook reserves the term "mandatory" for trainings that are "actively monitored as part of a formal audit."[868] 863. [redacted][869] 864. Facebook also provides training to [redacted][871] 865. [redacted]	[redacted][1754] They also fail to note that [redacted][1755] ● They fail in Paragraph 860 to fully describe the additional role-based training introduced at Meta, only referencing [redacted][1756] For further context on additional role-based trainings, please see the aforementioned comments relating to Paragraphs 786–92, *supra*. ● They fail to include certain relevant information in Paragraph 863, such as the fact that [redacted][1757] ● They fail to discuss details of the [redacted][1758]

[1754] *See* Ex. 73 (Apr. 29, 2022 resp. to March 17, 2022 request 9) at 9–10.

[1755] *See id.* at 10.

[1756] *See id.* at 9–10; Ex. 30 (Jan. 21, 2022 resp. to Dec. 2, 2021 requests 7 and 8) at 5–6.

[1757] Ex. 73 (Apr. 29, 2022 resp. to March 17, 2022 request 9) at 10 n.36.

[1758] *See* Ex. 73 (Apr. 29, 2022 resp. to March 17, 2022 request 10) at 11.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][872] 866. Facebook's Data Policy team provides training and guidance to [redacted][873] 867. Facebook also offers other trainings to [redacted][874] 868. Facebook provides onboarding training to the Privacy Policy team that covers a wide array of topics, including Privacy Review, [redacted][875] 869. Facebook also provides training to the Privacy Technical Audit team [redacted][876] *** [864] Ex. 30 at 6 (Jan. 21, 2022 resp. Dec. 2, 2021 requests 7 and 8). [865] Ex. 30 at 6 (Jan. 21, 2022 resp. Dec. 2, 2021 requests 7 and 8). [866] Ex. 30 at 5 (Jan. 21, 2022 resp. Dec. 2, 2021 requests 7 and 8); Ex. 73 at 9–10 (Apr. 29, 2022 resp. to First Mar.17, 2022 request 9).	[redacted][1759] ● They fail to discuss additional details regarding the trainings provided by the Data Policy team in Paragraph 866. For example, the Data Policy team [redacted][1760] They also fail to note that [redacted]

[1759] *Id.*

[1760] *Id.* at 12.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[867] Ex. 73 at 9 (Apr. 29, 2022 resp. to Mar. 17, 2022 request 9). [868] Ex. 73 at 9 (Apr. 29, 2022 resp. to Mar. 17, 2022 request 9). [869] Ex. 73 at 10 (Apr. 29, 2022 resp. to Mar. 17, 2022 request 9). [870] Ex. 73 at 11 (Apr. 29, 2022 resp. to Mar. 17, 2022 request 10). [871] Ex. 73 at 11 (Apr. 29, 2022 resp. to Mar. 17, 2022 request 10). [872] Ex. 73 at 11 (Apr. 29, 2022 resp. to Mar. 17, 2022 request 10). [873] Ex. 73 at 12 (Apr. 29, 2022 resp. to Mar. 17, 2022 request 10). [874] Ex. 73 at 12-13 (Apr. 29, 2022 resp. to Mar. 17, 2022 request 10). [875] Ex. 77 at 5 (May 13, 2022 resp. to Mar. 17, 2022 request 11). [876] Ex. 77 at 5–6 (May 13, 2022 resp. to Mar. 17, 2022 request 11).	[redacted][1761] ● They omit additional details around the formal trainings to [redacted] in Paragraph 867. ○ For example, Meta [redacted] ■ the [redacted] ■ the [redacted] ■ the [redacted]

[1761] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted] ■ the [redacted] ■ the [redacted] ■ the [redacted] and ■ the [redacted]

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1762] ○ Meta also [redacted] such as: ■ the [redacted] ■ the [redacted] ■ the [redacted]

[1762] *See id.* at 12–13.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted] ■ the [redacted] ■ the [redacted] ■ the [redacted] and ■ the [redacted]

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted].[1763] • They fail to discuss how [redacted] referenced in Paragraph 867. For example, [redacted][1764] Additionally, as of April 19, 2022, [redacted][1765] • They fail to provide additional context and details relating to the [redacted] For example, [redacted][1766] Specifically, [redacted]

[1763] *See id.* at 13–14.

[1764] *See id*. at 12–13.

[1765] *See id.* at 13.

[1766] *See* Ex. 77 (May 13, 2022 resp. to Mar. 17, 2022 request 11) at 5–6.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1767] In addition, the [redacted][1768] Meta also has a [redacted][1769] ● They fail to cover in Paragraphs 868 and 869 the [redacted], but instead merely references the [redacted] For example: ○ 1) the [redacted]

[1767] *Id.* at 5.

[1768] *Id*. at 6. [redacted]

[1769] *See* Ex. 77 (May 13, 2022 resp. to Mar. 17, 2022 request 3) at 8.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted] ○ 2) [redacted] ○ 3) [redacted]

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted] and ○ 4) [redacted][1770] ● They fail to note that [redacted], Meta was in the process of enhancing and formalizing [redacted][1771] ○ In the initial Assessment Report, the Assessor previewed that Meta planned to [redacted][1772] ○ Relating to such, [redacted]

[1770] Ex. 77 (May 13, 2022 resp. to Mar. 17, 2022 request 11) at 3–5.

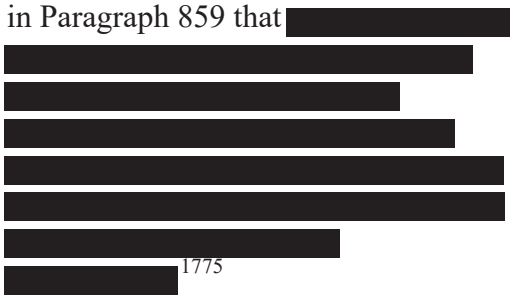
[1771] *See* Ex. 73 (Apr. 29, 2022 resp. to Mar. 17, 2022 request 10) at 12 n.40.

[1772] *See* Ex. 4 (2021 Assessment Report) at 30.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1773] ■ In these updates, the Training Program also [redacted] ■ [redacted] ● [redacted]

[1773] *See* Ex. D (2023 Assessment Report) at 39–40.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted]

Preliminary Findings of Fact (PFOF)	Response to PFOF
	 [1774] ● They fail to follow up on the reference in Paragraph 859 that  [1775] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding changes to Meta's Role-Based Privacy Training described herein.[1776]
I. Transparency, Notice and Choice (¶¶ 870–96)	
Paragraphs 870–71	**Paragraphs 870–71** purport to set forth the scope of Meta's Transparency, Notice, and

[1774] *See id.*

[1775] *See id.* at 40–41.

[1776] *See id.* at 39–43; Ex. 30 (Jan. 21, 2022 resp. to Dec. 2, 2021 requests 7 and 8) at 5–6; Ex. 73 (Apr. 29, 2022 resp. to Mar. 17, 2022 requests 3, 9, and 10) at 3–8, 9–14; Ex. 77 (May 13, 2022 resp. to Mar. 17, 2022 requests 11 and 3) at 3–11.

Preliminary Findings of Fact (PFOF)	Response to PFOF
870. Facebook developed a control domain called Transparency, Notice, and Choice, [redacted][877] 871. [redacted][878] [877] Ex. 4 at 123. [878] Ex. 4 at 123; Ex. 6 at 7–8 (Nov. 19, 2021 resp. to Aug. 19, 2021 request 18).	Choice ("TNC") domain created in response to the 2020 Order, as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Paragraph 870 wrongly suggests that the scope of Meta's TNC domain is limited to [redacted][1777]
Paragraphs 872–76 872. [redacted][879] 873. [redacted]	**Paragraphs 872–76** purport to describe certain Assessor observations, as reflected in the initial Assessment Report, about [redacted] as they existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order specifically required Meta to [redacted] In adopting a process for [redacted] Meta

[1777] *See* Ex. 4 (2021 Assessment Report) at 123–26; Ex. D (2023 Assessment Report) at 148.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted] 880 874. Based on these observations, the Assessor concluded [redacted] 881.	affirmatively chose to design and implement procedures beyond those specifically required by the Order.[1778] ● They omit important context about the baseline processes that Meta had established during the initial Assessment for [redacted]. As the Assessor acknowledged, [redacted] 1779 1780

[1778] *See supra* Section I.A.6.p ¶ 86.

[1779] *See* Ex. 4 (2021 Assessment Report) at 124, 132; Ex. 6 (Nov. 19, 2021 resp. to Aug. 19, 2021 request 18) at 7.

[1780] Ex. 6 (Nov. 19, 2021 resp. to Aug. 19, 2021 request 18) at 7.

Preliminary Findings of Fact (PFOF)	Response to PFOF
875. For the period from October 25, 2020, and August 19, 2021, Facebook published [redacted] new and revised privacy policies that [redacted][882] 876. These policies and terms included: [redacted][883] [879] Ex. 4 at 128, 132. [880] Ex. 4 at 133. [881] Ex. 4 at 133. [882] Ex. 6 at 7–9 (Nov. 19, 2021 resp. to Aug. 19, 2021 request 18).	[redacted][1781] ● They omit the specific actions Meta took since the initial Assessment to address the Assessor's findings: ○ First, [redacted][1782] ○ Second, [redacted][1783] ○ Third, [redacted][1784]

[1781] *Id.* at 7–8.

[1782] *Id.* at 9.

[1783] *Id.*

[1784] Ex. D (2023 Assessment Report) at 158.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[883] Ex. 6 at 7–9 (Nov. 19, 2021 resp. to Aug. 19, 2021 request 18).	[redacted][1785] ○ Fourth, [redacted][1786] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] described herein.[1787]
Paragraphs 877–78 877. [redacted]	**Paragraphs 877–78** purport to describe certain Assessor observations about Historical Commitments [redacted], as they existed during the initial six-month Assessment.

[1785] *Id.* at 149, 158.

[1786] *Id.* at 157.

[1787] *See* Ex. 4 (2021 Assessment Report) at 132–33.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][884] 878. [redacted] its "historical commitments" – i.e., any external statements it made to users prior to the implementation of the [redacted] process regarding the privacy and security of their Covered Information that remain visible to users and thus are still active. [redacted][885] [884] Ex. 4 at 125, 129. [885] Ex. 4 at 125, 129.	These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order specifically required Meta to implement safeguards regarding Historical Commitments.[1788] These safeguards relate to Meta's compliance with Part I, rather than Part VII, of the Order.[1789] Therefore, any evaluation of these safeguards does not support the Commission's allegations about Meta's Part VII compliance. Regardless, the Assessor did not find [redacted] in either the 2021 Assessment Report or the 2023 Assessment Report.[1790] ● They misstate the scope of Part I as it applies only to eligible representations regarding "the extent to which [Meta] maintains" the privacy or security of Covered Information,[1791] and not just statements "regarding the privacy [or] security" of Covered Information.[1792] These paragraphs also omit [redacted][1793]

[1788] *See* Order, Part VII; Ex. D (2023 Assessment Report at 265.

[1789] *See* Order, Part I.

[1790] *See* Ex. 4 (2021 Assessment Report) at 128–30; Ex. D (2023 Assessment Report) at 160.

[1791] Order, Part I.

[1792] PFOF ¶ 878.

[1793] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1794] • Paragraph 877 wrongly implies that Meta [redacted] Meta also developed [redacted][1795] This paragraph also fails to mention that [redacted][1796] • Paragraph 877 also wrongly suggests that [redacted][1797]

[1794] Ex. D (2023 Assessment Report) at 151.

[1795] *See* Ex. 4 (2021 Assessment Report) at 126; Ex. D (2023 Assessment Report) at 151–52.

[1796] Ex. D (2023 Assessment Report) at 151

[1797] *See* Ex. 4 (2021 Assessment Report) at 44; Ex. 6 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 1) at 45–46.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1798] [redacted] [redacted][1799] ● They omit that the 2021 Assessment Report did not [redacted][1800] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] described herein.[1801]
Paragraph 879 879. [redacted][886] [886] Ex. 4 at 129–130.	**Paragraph 879** purports to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to create or maintain a [redacted][1802] ● It omits details about [redacted]

[1798] *See* Ex. 4 (2021 Assessment Report) at 44; Ex. 6 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 1) at 45–46.

[1799] PFOF ¶ 877; *see* Ex. 4 (2021 Assessment Report) at 44; Ex. 6 (Nov. 19, 2021 resp. To Oct. 1, 2021 request 1) at 45–46.

[1800] *See* Ex. 4 (2021 Assessment Report) at 129–30.

[1801] *See id.*

[1802] *See* Order, Part VII.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1803] [redacted][1804] [redacted][1805] [redacted] ● It omits the Assessor's recent findings

[1803] Ex. 4 (2021 Assessment Report) at 7.

[1804] *See* Ex. D (2023 Assessment Report) at 156–57.

[1805] *See id*.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	regarding the remediation of the gap relating to the [redacted] In particular, the Assessor found in its 2023 Assessment Report that [redacted] which the Assessor found [redacted][1806] ● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] as reflected in the initial Assessment Report described herein.[1807]
Paragraph 880 880. [redacted]	**Paragraph 880** purports to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta [redacted][1808] ● It falsely concludes that Meta did not [redacted]

[1806] *Id.* at 11.

[1807] *See* Ex. 4 (2021 Assessment Report) at 129–30.

[1808] *See* Order, Part VII.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][887] [887] Ex. 4 at 130.	[redacted] Indeed, the 2021 Assessment Report specified that [redacted][1809] The 2021 Assessment Report also specified that [redacted][1810] ● It omits that, [redacted][1811] ● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations [redacted] described herein.[1812]
Paragraph 881 881. At his February 4, 2022 deposition, Chief Executive Officer Mark Zuckerberg	**Paragraph 881** purports to describe Mark Zuckerberg's testimony about the program. This paragraph is misleading insofar as it

[1809] Ex. 4 (2021 Assessment Report) at 130.

[1810] *Id.*

[1811] Ex. D (2023 Assessment Report) at 157.

[1812] *See* Ex. 4 (2021 Assessment Report) at 129–30.

Preliminary Findings of Fact (PFOF)	Response to PFOF
testified: "[O]ne of the main things that we have agreed to is . . . doing an inventory and having a process to ensure that the commitments that we're making around privacy and data use especially, but I think potentially broader than that, are accurate. . . . I think especially as the company has grown a lot, . . . and a lot of different people [are] building different things and we want to go out and say different things publicly, we have just had to be a lot more rigorous around setting up a process to determine what commitments can people actually make that we as a company can stand behind."[888] [888] Ex. 43 at 75:5–16.	does not support a finding that Meta did not meet Part VII's requirements, because: ● The Commission does not clarify that the processes Meta developed for [redacted] go well beyond the requirements of the Order, which requires no [redacted][1813] As described in Meta's response to Paragraphs 880, these include [redacted][1814]
Paragraphs 882–87 882. Facebook created a category of telephone numbers it calls Security Phone Numbers (SPNs). Facebook defines SPNs to include [redacted][889] 883. [redacted][890] 884. [redacted]	**Paragraphs 882–87** purport to describe Meta's safeguards relating to security phone numbers ("SPNs") within the TNC domain as they existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to [redacted][1815] These safeguards relate to Meta's compliance with Part IV, rather than Part VII, of the Order.[1816] Therefore, any evaluation of these safeguards does not support the Commission's allegations about Meta's Part VII compliance. Regardless, the Assessor

[1813] *See* Order, Part I.

[1814] *See supra* Section IV.I, Resp. to PFOF ¶ 880; Ex. D (2023 Assessment Report) at 157.

[1815] *See* Order, Part VII.

[1816] *See* Order, Part IV.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][891] 885. [redacted][892] 886. [redacted]	did not identify any improper [redacted][1817] • They omit that Meta [redacted][1820] • Paragraph 883 fails to mention that Meta [redacted][1821] • They omit that [redacted]

[1817] *See* Ex. 4 (2021 Assessment Report) at 130–32; Ex. D (2023 Assessment Report) at 160–62.

[1818] *See* Order, Part IV; Ex. 4 (2021 Assessment Report) at 125; Ex. D (2023 Assessment Report) at 150.

[1819] Order, Part IV.

[1820] *See id.*

[1821] *See* Ex. 4 (2021 Assessment Report) at 125.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][893] 887. [redacted][894] [889] Ex. 6 at 4 (Nov. 19, 2021 resp. to Aug 19, 2021 request 16). [890] Ex. 4 at 130. [891] Ex. 6 at 4 (Nov. 19, 2021 resp. to Aug 19, 2021 request 16). [892] Ex. 4 at 125, 131; Ex. 6 at 4 (Nov. 19, 2021 resp. to Aug 19, 2021 request 16). [893] Ex. 4 at 125, 131; Ex. 6 at 4 (Nov. 19, 2021 resp. to Aug 19, 2021 request 16). [894] Ex. 4 at 125.	[redacted][1822] ● They wrongly assert that [redacted] As the Assessor observed in its 2023 Assessment Report, [redacted][1823]
Paragraphs 888–89 888. The Assessor found [redacted][895] 889. Specifically, the Assessor observed [redacted]	**Paragraphs 888–89** purport to describe certain Assessor observations about [redacted] based on findings from the first six months of the Program's operation as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did

[1822] *See* Ex. 6 (Nov. 19, 2021 resp. to Aug. 19, 2021 request 16) at 4.

[1823] Ex. D (2023 Assessment Report) at 150.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted] The Assessor concluded [redacted][896] [895] Ex. 4 at 128. [896] Ex. 4 at 131.	not meet Part VII's requirements, because: ● Paragraph 888 inaccurately asserts [redacted] for the reasons set forth in Meta's response to Paragraphs 890–93, which Meta expressly incorporates herein.[1824] ● Paragraph 889 omits that the Assessor's observations were directed at a perceived weakness in the documentation relating to the safeguard, rather than the effectiveness of the safeguard's operation.[1825] Paragraph 889 also suggests [redacted][1826][1827]

[1824] *See infra* Section IV.I, Resp. to PFOF ¶¶ 890–93.

[1825] *See* Ex. 4 (2021 Assessment Report) at 131,

[1826] *See id.*

[1827] *See* Ex. 6 (Nov. 19, 2021 resp. to Aug. 19, 2021 request 16) at 4–7.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	● Paragraph 889 wrongly asserts that [redacted][1828] [redacted] ○ [redacted][1829] [redacted]

[1828] *See* Ex. 4 (2021 Assessment Report) at 131.

[1829] *See* Ex. 6 (Nov. 19, 2021 resp. to Aug. 19, 2021 request 16) at 5.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1830] ○ [redacted][1831] ○ [redacted][1833] ○ [redacted][1834] ● They omit the changes Meta implemented to address the Assessor's observation in the initial Assessment Report [redacted]

[1830] *See id.*

[1831] *See id.* at 5–6.

[1832] *See id.* at 6–7.

[1833] *See* Ex. D (2023 Assessment Report) at 159.

[1834] *See* Ex. 6 (Nov. 19, 2021 resp. to Aug. 19, 2021 request 16) at 7.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted] Specifically, since May 13, 2021, actions taken by [redacted][1835] Although the Assessor noted in the 2023 Assessment Report that [redacted][1836] [redacted][1837] Meta is currently in the process of remediating Gaps from the 2023 Assessment period, but as explained above, it has already implemented changes to remediate the issue described in Paragraph 889. ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] described herein.[1838]
Paragraph 890 890. [redacted]	**Paragraph 890** purports to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case,

[1835] *See id.* at 4; Ex. D (2023 Assessment Report) at 157.

[1836] *See* Ex. D (2023 Assessment Report) at 161; Ex. 4 (2021 Assessment Report) at 130–31,

[1837] *See* Ex. D (2023 Assessment Report) at 161–62.

[1838] *See* Ex. 4 (2021 Assessment Report) at 130–31.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][897] [897] Ex. 4 at 125, 131.	does not support a finding that Meta did not meet Part VII's requirements because: ● It omits the Assessor's recent findings regarding Meta's remediation of this issue. Specifically, the Assessor found in its 2023 Assessment Report that Meta had [redacted][1839] ● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted][1840] This paragraph likewise fails to specify [redacted][1841]
Paragraphs 891–93 891. [redacted][898]	**Paragraphs 891–93** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● They omit [redacted]

[1839] Ex. D (2023 Assessment Report) at 157.

[1840] *See* Ex. 4 (2021 Assessment Report) at 131.

[1841] *See id.* at 130–32.

Preliminary Findings of Fact (PFOF)	Response to PFOF
892. The Assessor found that [redacted][899]	[redacted][1842] • They fail to mention that [redacted][1844] • They omit that during a period covering the entire initial six-month Assessment, there was no [redacted]
893. As of October 25, 2020, Oculus no longer allowed the creation of new "Oculus-only" accounts; all new accounts are part of a Facebook account and fall under Facebook policies and procedures. [redacted]	

[1842] *See id.* at 132.

[1843] *See* Ex. 5 (Oct. 29, 2021 resp. to Aug. 18, 2021 request 17 at 7.

[1844] *See id.* at 8.

[1845] *See id.* at 8–9.

[1846] *See id.* at 8.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][900] [898] Ex. 4 at 132. [899] Ex. 4 at 132. [900] Ex. 4 at 132.	[redacted][1847] ● They omit that Meta remediated the issue relating to the [redacted][1848][redacted][1849] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] described herein.[1850]
Paragraphs 894–96 894. [redacted]	**Paragraphs 894–96** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because:

[1847] *See id.*

[1848] *See id.* at 9.

[1849] *See id.* at 8–9.

[1850] *See* Ex. 4 (2021 Assessment Report) at 130–31.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][901] 895. The Assessor found that, [redacted][902] 896. The Assessor concluded [redacted][903] [901] Ex. 4 at 133, 215. [902] Ex. 4 at 133. [903] Ex. 4 at 133.	• Nothing in Part VII of the Order required Meta to [redacted] Neither does Part VII of the Order [redacted] In requiring [redacted] Meta affirmatively chose to implement safeguards beyond those specifically required by the Order. • They omit that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] described herein.[1851]

[1851] *See id.* at 133.

Preliminary Findings of Fact (PFOF)	Response to PFOF
J. CMER (¶¶ 897–948)	
Paragraphs 897–909 897. Part VII.F of the 2020 Order requires Facebook to "[a]ssess, monitor, and test, at least once every twelve (12) months . . . the effectiveness of any safeguards put in place pursuant to [the Order] to address risks to the privacy, confidentiality, or Integrity of Covered Information, and modify the Privacy Program based on the results."[904] 898. [redacted][905] 899. [redacted][906] 900. [redacted][907] 901. [redacted][908] 902. [redacted][909]	**Paragraphs 897–909** purport to describe certain Assessor observations about [redacted] as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to [redacted] In adopting such processes, Meta affirmatively chose to implement procedures beyond those specifically required by the Order. ● [redacted][1852] ● They fail to acknowledge—as the Assessor acknowledged—[redacted]

[1852] *See* Ex. 30 (Jan. 21, 2022 resp. to Nov. 24, 2021 request 11) at 7.

Preliminary Findings of Fact (PFOF)	Response to PFOF
903. [redacted][910] 904. [redacted][911] 905. [redacted][912] 906. [redacted][913] 907. [redacted][914] 908. [redacted]	[redacted][1853] ● They omit the Assessor's most recent findings regarding remediation efforts for [redacted] In particular, they omit that the Assessor stated in its 2023 Assessment Report that all gaps identified in the initial Assessment Report were remediated and that [redacted][1854] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1855]

[1853] *See* Ex. 4 (2021 Assessment Report) at 54.

[1854] *See* Ex. D (2023 Assessment Report) at 69.

[1855] *See* Ex. 4 (2021 Assessment Report) at 59–60.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][915] 909. [redacted][916] ***	
[904] Ex. 3, Part VII.F. [905] Ex. 70 [redacted] at 3. [906] Ex. 4 at 52; Ex. 70 at 3. [907] Ex. 4 at 52–53; Ex. 70 at 3. [908] Ex. 70 at 3. [909] Ex. 4 at 52; Ex. 70 at 3. [910] Ex. 70 at 3; Ex. 4 at 52. [911] Ex. 70 at 3; Ex. 4 at 53. [912] Ex. 70 at 8–9; *see also* Ex. 4 at 53. [913] Ex. 4 at 53; Ex. 70 at 3–4, 9–14. [914] Ex. 30 at 7 (Jan. 21, 2022 resp. to Nov. 24, 2021 request 11). [915] Ex. 30 at 7 (Jan. 21, 2022 resp. to Nov. 24, 2021 request 11). [916] Ex. 30 at 7 (Jan. 21, 2022 resp. to Nov. 24, 2021 request 11).	
Paragraphs 910–16 910. The Assessor noted that [redacted][917]	**Paragraphs 910–16** purport to describe certain Assessor observations about [redacted] as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because:

Preliminary Findings of Fact (PFOF)	Response to PFOF
911. As part of its first Privacy Risk Assessment, [redacted][918]	• Nothing in Part VII of the Order required Meta to [redacted]
912. The Assessor explained that, [redacted][919]	• They omit relevant context about [redacted][1856] [redacted][1857]
913. The Assessor stated [redacted][920]	
914. The Assessor found that [redacted][921]	
915. The Assessor determined that [redacted][922]	
916. The Assessor also observed that, [redacted][923]	• They mischaracterize the Assessor's statements regarding Meta's plans [redacted]

[1856] *See* Ex. 6 (Nov. 19, 2021 resp. to Oct. 1, 2021 request 5) at 49–50.

[1857] *See* Ex. 15 (PRA 1.0 Playbook) at 11–12.

Preliminary Findings of Fact (PFOF)	Response to PFOF
*** [917] Ex. 4 at 59. [918] Ex. 4 at 59; *see supra* ¶¶ 64–68, 139–143. [919] Ex. 4 at 59. [920] Ex. 4 at 59. [921] Ex. 4 at 59. [922] Ex. 4 at 59. [923] Ex. 4 at 60.	[redacted] Rather, the Assessor stated that [redacted] [1858] [redacted] [1859] In addition, the findings also omit that the Assessor found in its 2023 Assessment Report that Meta's [redacted] [1860] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1861]

[1858] *See* Ex. 4 (2021 Assessment Report) at 59.

[1859] *See id.* at 60.

[1860] Ex. D (2023 Assessment Report) at 64.

[1861] *See* Ex. 4 (2021 Assessment Report) at 59–60.

Preliminary Findings of Fact (PFOF)	Response to PFOF
Paragraph 917–22 917. The Assessor observed [redacted][924] 918. The Assessor also observed [redacted][925] 919. The Assessor explained that [redacted][926] 920. The Assessor added that [redacted][927] 921. Facebook stated that [redacted][928] 922. The Assessor explained that [redacted][929]	**Paragraphs 917–22** purport to describe certain Assessor observations [redacted] as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order—Part VII.F or otherwise—required Meta to [redacted] In doing so, Meta affirmatively chose to implement procedures beyond those specifically required by the Order. ● They omit important information available to the Commission regarding [redacted][1862] ● They omit the Assessor's most recent findings on [redacted] In its 2023 Assessment Report, the Assessor stated that all gaps in the domain identified in the initial Assessment

[1862] *See* Ex. 30 (Jan. 21, 2022 resp. to Nov. 24, 2021 request 11) at 7.

Preliminary Findings of Fact (PFOF)	Response to PFOF
*** [924] Ex. 4 at 60. [925] Ex. 4 at 60. [926] Ex. 4 at 60. [927] Ex. 4 at 60. [928] Ex. 30 at 8 (Jan. 21, 2022 resp. to Nov. 24, 2021 request 12). [929] Ex. 4 at 61.	Report were remediated and, [redacted][1863] [redacted][1864] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein. [redacted][1865] But this risk does not articulate a harm or impact on users.
Paragraphs 923–35	**Paragraphs 923–35** purport to describe certain Assessor observations about [redacted]

[1863] *See* Ex. D (2023 Assessment Report) at 69.

[1864] *See id.* at 70.

[1865] *See* Ex. 4 (2021 Assessment Report) at 60–61.

Preliminary Findings of Fact (PFOF)	Response to PFOF
923. [redacted][930] 924. [redacted][931] 925. [redacted][932] 926. [redacted][933] 927. [redacted][934] 928. The Assessor observed that, [redacted][935] 929. The Assessor determined, [redacted]	potential access abuse as they existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to [redacted] In doing so, Meta affirmatively chose to implement procedures beyond those specifically required by the Order. Nor does anything in Part VII of the Order require Meta to [redacted] In adhering to and adopting [redacted] Meta affirmatively chose to adopt procedures beyond those specifically required by the Order. ● They omit details available to the Commission as to why [redacted] observed instances of potential access abuse were not escalated to Employment Law. Warnings were issued for each of the [redacted] instances [redacted][1866] ○ [redacted]

[1866] Ex. 76 (Apr. 15, 2022 resp. to Mar. 17, 2022 request 2) at 8.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][936] 930. Facebook stated that, between October 25, 2020, and September 29, 2021 when it revised its access abuse procedures), there were [redacted] instances of potential access abuse not escalated to Employment Law. In each case, the IDR team instead issued a "warning."[937] 931. The Assessor found that [redacted][938] 932. The Assessor explained [redacted][939] 933. [redacted][940] 934. The Assessor observed [redacted][941]	[redacted][1867][redacted][1868] ○ [redacted][1869] ○ [redacted][1870] ● They describe Meta's adherence to [redacted] in a misleading way. ○ Paragraph 934 fails to acknowledge that [redacted]

[1867] *Id.*

[1868] *Id.*

[1869] *Id.*

[1870] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
935. The Assessor concluded that [redacted][942] ***	[redacted] ○ In addition, the Commission's suggestion in Paragraph 935 that [redacted] is plainly contradicted by the Assessor's own findings, as detailed in Paragraph 934, which make clear that [redacted][1871] ● They omit information available to the Commission regarding enhancements made to [redacted] Since the conclusion of the initial Assessment period, Meta has updated [redacted]

[930] Ex. 29 ([redacted]) at 19; Ex. 71 (Internal Access Abuse Employment Law Runbook).
[931] Ex. 29 at 19.
[932] Ex. 4 at 61 & n.44.
[933] Ex. 29 at 19.
[934] Ex. 71 at 3–4.
[935] Ex. 4 at 61.
[936] Ex. 4 at 61; Ex. 76 at 8 (Apr. 15, 2022 resp. to Mar. 17, 2022 (Set 11) request 2).
[937] Ex. 76 at 8 (Apr. 15, 2022 resp. to Mar. 17, 2022 Set 11) request 2).
[938] Ex. 4 at 61.
[939] Ex. 4 at 61; *see also* Exs. 29, 71.
[940] Ex. 4 at 61.
[941] Ex. 4 at 61.
[942] Ex. 4 at 61.

[1871] *See* Ex. 4 (2021 Assessment Report) at 61 (emphasis added).

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1872] ● They omit the Assessor's most recent findings on [redacted]. In its 2023 Assessment Report, the Assessor stated that this gap had been fully remediated.[1873] ● They lack context insofar as they fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein. [redacted][1874]
Paragraphs 936–48 936. Part VII.E.2.c of the Order requires that, each quarter, Facebook deliver to its Principal Executive Officer (Mark Zuckerberg) and the Assessor, a report containing (1) a summary of the Privacy Review Statements generated during the prior quarter; (2) an appendix containing each Privacy Review Statement from the prior quarter; and (3) and appendix listing all Privacy Review decisions generated during the prior quarter.[943]	**Paragraphs 936–48** purport to describe certain obligations set forth in Part VII of the Order relating to Quarterly Privacy Review Reports ("QPRR") and the Assessor's observations about the first QPRR as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because:

[1872] *See* Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 9) at 12.

[1873] Ex. D (2023 Assessment Report) at 132.

[1874] *See* Ex. 4 (2021 Assessment Report) at 61; Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 9) at 12.

Preliminary Findings of Fact (PFOF)	Response to PFOF
937. Each Quarterly Privacy Review Report (QPRR) summary of Privacy Review Statements must include a "detailed discussion" of 1) the material risks to Covered Information that Facebook identified in connection with the relevant Privacy Reviews during the prior quarter and (2) how Facebook addressed those risks.[944] 938. Facebook created a "Quarterly Privacy Review Report Preparation Process" (QPRR Process).[945] 939. [redacted][946] 940. [redacted][947] 941. Facebook's first QPRR covered the fourth quarter of 2020.[948] 942. The Assessor determined that [redacted][949]	• Nothing in Part VII of the Order requires Meta to [redacted] In doing so [redacted] Meta affirmatively chose to implement procedures beyond those specifically required by the Order. • They do not include important details about [redacted][1875][1876]

[1875] *See* Ex. 14 (Jan. 11, 2022 resp. to Nov. 24, 2021 request 7) at 17.

[1876] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
943. The Assessor noted that, [redacted][950] 944. Facebook's first QPRR [redacted][951] 945. Facebook's [redacted][952] 946. [redacted][953] 947. The Assessor also explained [redacted][954]	[redacted][1877] ● They do not include details on how Meta has [redacted][1878][1879][1880][1881][1882] ● They omit the Assessor's most recent findings on the QPRR. In its 2023 Assessment Report, the Assessor stated

[1877] *Id.*

[1878] *Id.* at 7, 18.

[1879] *Id.* at 18.

[1880] *Id.*

[1881] *Id.*

[1882] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
948. The Assessor added [redacted][955] ***	that the QPRR gap was fully remediated. ○ The Assessor explained that [redacted][1883] ○ The Assessor also determined that [redacted] The Assessor determined that [redacted]

[943] Ex. 3 at 10.
[944] Ex. 3 at 10.
[945] Ex. 72.
[946] Ex. 4 at 62; Ex. 72 at 7 ("Step 1").
[947] Ex. 4 at 62; Ex. 72 at 7 ("Step 2").
[948] Ex. 24 (Quarterly Privacy Review Report (Q4 2020)).
[949] Ex. 4 at 62; *see also* Ex. 24.
[950] Ex. 4 at 62; *see also* Ex. 24 at 5–7.
[951] Ex. 24.
[952] Ex. 24 at 9–12; Ex. 4 at 62–63.
[953] Ex. 14 at 15 (Jan. 11, 2022 resp. to Nov. 24[,] 2021 request 8).
[954] Ex. 4 at 63.
[955] Ex. 4 at 63.

[1883] *See* Ex. D (2023 Assessment Report) at 95.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1884] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1885]
K. IPP (¶¶ 949–78)	
Paragraph 949–57 949. Part VII.A of the 2020 Order requires Facebook to "[d]ocument in writing the content, implementation, and maintenance of the Privacy Program . . . ."[956] 950. Part VII.E of the 2020 Order requires Facebook to "[d]esign, implement, maintain, and document safeguards that control for the material and external risks identified by Respondent in response to Part VII.D."[957] 951. To comply with Part VII, [redacted][958] 952. According to the Assessor's Report, [redacted]	**Paragraphs 949–57** purport to set forth the scope of Meta's [redacted] created in response to Part VII.E of the 2020 Order, as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● They wrongly indicate that Meta created the [redacted] in response to Part VII.A of the 2020 Order. Meta fulfills the requirements of Part VII.A through safeguards [redacted].[1886] ● They misquote the 2021 Assessment Report in Paragraphs 953 and 955. With respect to Paragraph 953, the 2021 Assessment Report states that

[1884] *Id.* at 95–96.

[1885] *See* Ex. 4 (2021 Assessment Report) at 62–63.

[1886] *See supra* Section I.A.6.a ¶ 27.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted]"[959] 953. According to the Assessor's Report, [redacted][960] 954. According to the Assessor's Report, [redacted][961] 955. According to the Assessor's Report, [redacted][962] 956. According to the Assessor's Report, [redacted][963] 957. According to the Assessor's Report, as of October 25, 2020, Facebook [redacted]	[redacted][1887] With respect to Paragraph 955, the 2021 Assessment Report states that Meta uses [redacted][1888]

[1887] Ex. 4 (2021 Assessment Report) at 15 (emphasis added).

[1888] *Id.* (emphasis added).

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][964] *** [956] Ex. 3, Part VII.A. [957] Ex. 3[,] Part VII.E. [958] Ex. 4 at 15. [959] Ex. 4 at 15. [960] Ex. 4 at 15. [961] Ex. 4 at 15. [962] Ex. 4 at 15. [963] Ex. 4 at 15, 164–65, 169, 220, 224 ([redacted] . [964] Ex. 4 at 15.	
Paragraph 958 958. [redacted][965] [966] *** [965] The Assessor, Protiviti, informed the FTC that, [redacted] *See* Ex. 4 at 18–19. [966] Ex. 4 at 18.	**Paragraph 958** purports to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● It does not refer to Meta's implementation, in response to the Order, of what the Assessor described as a "foundational redesign of both its Safeguard environment and compliance documentation."[1889] In addition to the implementation of [redacted] safeguards by October 25, 2020, and a further [redacted] safeguards throughout the Assessment period, the Assessor noted that Meta "published more than [redacted] privacy governing documents and approximately an additional [redacted] privacy-focused policies, playbooks, procedures, tools, templates, and guidelines."[1890]

[1889] *Id.*

[1890] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	● It does not include information available to the Commission regarding circumstances in which the Assessor deemed its initial statement regarding [redacted] resolved and closed after discussion with Meta.[1891] ● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1892]
Paragraph 959(a) 959. [redacted]: a. [redacted] i. [redacted][967] ii. [redacted][968]	**Paragraph 959(a)** purports to describe certain Assessor observations about [redacted], as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to develop any particular policies, processes, procedures, or guidance related to [redacted] The Order requires Meta to "[d]esign, implement, maintain, and document safeguards that control for the material and external risks identified by Respondent in response to Part VII.D." Nor did Part VII of the Order require Meta to develop [redacted] In doing so, Meta

[1891] *See infra* Section IV.K, Resp. to PFOF ¶ 960(a) (citing Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 9.iii) at 10–11).

[1892] Ex. 4 (2021 Assessment Report) at 15.

Preliminary Findings of Fact (PFOF)	Response to PFOF
iii. [redacted][969] iv. [redacted][970] v. [redacted][971] vi. The Assessor determined that [redacted][972] ***	affirmatively chose to document and implement safeguards and procedures beyond those specifically required by the Order. ● It wrongly suggests that [redacted] As set forth in the initial Assessment Report, [redacted][1893] [redacted][1894] ● It wrongly suggests that Meta did not have a [redacted] As indicated to the Commission: [redacted][1895] ● It does not include details available to the Commission regarding Meta's

[967] Ex. 52 ([redacted] at F2; *see also* Ex. 4 at 87–88.
[968] Ex. 52 at F2.
[969] Ex. 52 at F2.
[970] Ex. 52 at F2.
[971] Ex. 51 at 8 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 9.i).
[972] Ex. 52 at F2; *see also* Ex. 4 at 87–88.

[1893] *Id.* at 66; Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 9.i) at 8.

[1894] *See* Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 9.i at 8.

[1895] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	efforts to strengthen its [redacted] After the Assessment period, Meta continued to supplement its [redacted][1896] Meta additionally enhanced the [redacted][1897] ● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1898]
Paragraph 959(b) 959. [redacted] b. [redacted] i. According to the Assessor, [redacted]	**Paragraph 959(b)** purports to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to develop any particular policies, processes, procedures, or guidance related to [redacted] The Order requires Meta to "[d]esign,

[1896] *Id.* at 8–9.

[1897] *See id*.

[1898] Ex. 4 (2021 Assessment Report) at 73.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][973] ii. The Assessor noted that, [redacted][974] iii. [redacted] the Assessor found that [redacted]	implement, maintain, and document safeguards that control for the material and external risks identified by Respondent in response to Part VII.D." In developing policies, processes, procedures, and/or guidance regarding [redacted] Meta affirmatively chose to implement procedures beyond those specifically required by the Order. ● It does not include information available to the Commission regarding the policies and procedures that Meta has maintained since at least October 2020 addressing, among other things, [redacted][1899] In particular, Paragraph 959(b) omits that: [redacted]

[1899] *See* Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 9.ii) at 9.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][975] iv. The Assessor concluded that [redacted][976] v. In its February 18, 2022, response, Facebook [redacted][977] vi. In its February 18, 2022, response, Facebook also stated that, [redacted]	[redacted][1900] ● It does not include information available to the Commission regarding [redacted][1901] ● It also omits material facts, and is therefore inaccurate, insofar as it fails to mention that [redacted][1902] ● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's

[1900] *Id.*

[1901] *See id.* at 10.

[1902] *See id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][978] *** [973] Ex. 52 at F31. [974] Ex. 52 at F31. [975] Ex. 52 at F31. [976] Ex. 52 at F31. [977] Ex. 51 at 9 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 9.ii). [978] Ex. 51 at 10 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 9.ii).	observations described herein.[1903]
Paragraph 960(a) 960. The Assessor identified [redacted] a. [redacted] i. The Assessor noted that [redacted]	**Paragraph 960(a)** purports to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to develop any particular policies, processes, procedures, or guidance related to [redacted] The Order requires Meta to "[d]esign, implement, maintain, and document safeguards that control for the material

[1903] Ex. 4 (2021 Assessment Report) at 73.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][979] ii. The Assessor also noted [redacted][980] iii. In its January 21, 2022, response, Facebook agreed that the specific term [redacted] which is the formal name of Safeguard [redacted] did not appear in the Safeguard Effectiveness Testing Playbook.[981] *** [979] Ex. 52 at F11. [980] Ex. 52 at F11. [981] Ex. 51 at 10 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 9.iii).	and external risks identified by Respondent in response to Part VII.D." In developing the [redacted] procedures beyond those specifically required by the Order. ● It mistakenly asserts that [redacted][1904] During the initial Assessment, the Assessor deemed its initial statement resolved and closed after further discussion with Meta regarding [redacted][1905] ● It wrongly suggests that Meta's acknowledgment that [redacted]

[1904] *See* Ex. 52 [redacted] at 11M.

[1905] *See* Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 9.iii) at 10–11.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][906] ● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1907]
Paragraph 960(b) 960. The Assessor identified [redacted]: b. [redacted] i. The Assessor noted that [redacted][982] ii. The Assessor noted that, [redacted]	**Paragraph 960(b)** purports to describe certain Assessor observations about [redacted], as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to develop any particular policies, processes, procedures, or guidance related to [redacted] The Order requires Meta to "[d]esign, implement, maintain, and document safeguards that control for the material and external risks identified by Respondent in response to Part VII.D." In developing [redacted] Meta affirmatively chose to implement procedures beyond those specifically required by the Order. ● It fails to mention that, [redacted]

[1906] *See id.*

[1907] Ex. 4 (2021 Assessment Report) at 59–60.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][983] iii. The Assessor also observed that [redacted][984] iv. In its February 18, 2022, response, Facebook [redacted][985] ***	[redacted][1908] ● It wrongly suggests that [redacted][1909][1910][1911] ● It does not include details available to the Commission that [redacted]

[982] Ex. 52 at F12.
[983] Ex. 52 at F12.
[984] Ex. 52 at F12; *see also* Ex. 4 at 60.
[985] Ex. 51 at 11 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 9.iv .

[1908] *See* Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 9.iv) at 11–12.
[1909] *See id.* at 11.
[1910] *See id.* at 12.
[1911] *See id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1912] ● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1913]
Paragraph 960(c) 960. The Assessor identified [redacted] c. [redacted] i. The Assessor found [redacted]	**Paragraph 960(c)** purports to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to develop any particular policies, processes, procedures, or guidance related to [redacted] The Order requires Meta to "[d]esign, implement, maintain, and document safeguards that control for the material and external risks identified by Respondent in response to Part VII.D." In developing [redacted] Meta affirmatively chose to implement procedures beyond those specifically

[1912] *See id.*

[1913] *See* Ex. 4 (2021 Assessment Report) at 55–56.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][86] ii. While the Assessor recognized that [redacted][987] iii. Further, the Assessor found [redacted][988] iv. The Assessor also stated [redacted][989] v. [redacted] the Facebook playbook stated, [redacted]	required by the Order. ● It does not include details available to the Commission that Meta maintained [redacted][1914] There is no requirement in the Order that [redacted] ● It wrongly implies that [redacted] As the Assessor observed, [redacted][1915] ● It fails to mention [redacted][1916] [redacted][1917] Meta

[1914] *See* Ex. 52 [redacted] at F25, F34.

[1915] *See* Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022 requests 9.v and 9.vi) at 12–13; Ex. 4 (2021 Assessment Report at 61.

[1916] *See* Ex. 4 (2021 Assessment Report) at 103.

[1917] *Id.* at 55.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted] 990 vi. In its February 18, 2022, response, Facebook [redacted] 991 vii. In its February 18, 2022, response, Facebook [redacted] 992 viii. In its February 18, 2022, response, Facebook [redacted]	also maintains [redacted] 1918 ● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1919]

[1918] *See id.* at 55, 57, 118; Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022 requests 9.v and 9.vi) at 13.

[1919] *See* Ex. 4 (2021 Assessment Report) at 103.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][993] ix. In its February 18, 2022, response, Facebook [redacted][994] *** [986] Ex. 52 at F25. [987] Ex. 52 at F25. [988] Ex. 52 at F25. [989] Ex. 52 at F34. [990] Ex. 52 at F34. [991] Ex. 51 at 12 (Feb. 18, 2022 resp. to Jan. 10, 2022 requests 9.v and 9.vi). [992] Ex. 51 at 12 (Feb. 18, 2022 resp. to Jan. 10, 2022 requests 9.v and 9.vi). [993] Ex. 51 at 13 (Feb. 18, 2022 resp. to Jan. 10, 2022 requests 9.v and 9.vi). [994] Ex. 51 at 13 (Feb. 18, 2022 resp. to Jan. 10, 2022 requests 9.v and 9.vi).	
Paragraph 961	**Paragraph 961** purports to describe certain Assessor observations about [redacted]

Preliminary Findings of Fact (PFOF)	Response to PFOF
961. The Assessor identified [redacted] a. [redacted] i. [redacted] the Assessor found that [redacted][995] ii. The Assessor stated [redacted][996] iii. [redacted]	[redacted] as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to develop any particular policies, processes, procedures, or guidance related to [redacted] The Order requires Meta to "[d]esign, implement, maintain, and document safeguards that control for the material and external risks identified by Respondent in response to Part VII.D." In developing [redacted] Meta affirmatively chose to implement procedures beyond those specifically required by the Order. ● It falsely characterizes Meta's process only as [redacted][1920]

[1920] Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 9.vii) at 13.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][997] iv. Therefore, the Assessor found that [redacted][998] v. In its February 18, 2022, response, Facebook [redacted][999] vi. In its February 18, 2022, response, Facebook [redacted][1000] *** [995] Ex. 52 at F29. [996] Ex. 52 at F29. [997] Ex. 52 at F29. [998] Ex. 52 at F29. [999] Ex. 51 at 13 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 9.vii). [1000] Ex. 51 at 14 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 9.vii).	[redacted][1921] [redacted][1922] [redacted][1923] [redacted][1924] ● It does not include details available to the Commission that [redacted] The Commission's preliminary factual findings additionally fail to mention that [redacted]

[1921] *Id.* at 13–14.

[1922] *Id.* at 14.

[1923] *Id.*

[1924] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1925] ● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1926]
Paragraph 962(a) 962. The Assessor identified [redacted] a. [redacted] i. [redacted][1001] ii. However, the Assessor noted that [redacted][1002] *** [1001] Ex. 4 at 18; *see also* Ex. 52 at F7.	**Paragraph 962(a)** purports to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to develop any particular policies, processes, procedures, or guidance related to [redacted] The Order requires Meta to "[d]esign, implement, maintain, and document safeguards that control for the material and external risks identified by Respondent in response to Part VII.D." In developing documentation for its Internal Privacy Complaints Handling Process, Meta affirmatively chose to implement procedures beyond those specifically required by the Order. The Order does not require Meta to [redacted] ● It wrongly implies there was some

[1925] *See id.* at 13–14.

[1926] *See* Ex. 4 (2021 Assessment Report) at 118.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[1002] Ex. 4 at 18.	deficiency in Meta's [redacted] • It does not include details available to the Commission that in response to the Assessors' observation, Meta stated that it would [redacted][1927] The Assessor recognized in the 2023 Assessment Report that [redacted][1928] • It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1929]
Paragraph 962(b) 962. The Assessor identified [redacted] b. [redacted]	**Paragraph 962(b)** purports to describe certain Assessor observations about [redacted], as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: • Nothing in Part VII of the Order required Meta to develop any particular

[1927] *See* Ex. D (2023 Assessment Report) at 45.

[1928] *See id.*

[1929] *See id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted] i. The Assessor found that [redacted][1003] ii. The Assessor also found that, [redacted][1004] ***	policies, processes, procedures, or guidance related to [redacted] The Order requires Meta to "[d]esign, implement, maintain, and document safeguards that control for the material and external risks identified by Respondent in response to Part VII.D." In developing [redacted] Meta affirmatively chose to implement procedures beyond those specifically required by the Order. The Order does not require Meta to develop [redacted] ● It fails to mention [redacted][1930] ● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1931]
Paragraph 963(a) 963. The Assessor identified [redacted]	**Paragraph 963(a)** purports to describe certain Assessor observations about [redacted] as reflected in the

[1003] Ex. 4 at 18; *see also* Ex. 52 at F18.
[1004] Ex. 4 at 18.

[1930] *See* Ex. 52 [redacted] at 31G.

[1931] *See* Ex. 4 (2021 Assessment Report) at 34.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted] a. [redacted] i. [redacted] [redacted][1005] ii. The Assessor found that [redacted][1006] *** [1005] Ex. 4 at 18. [1006] Ex. 4 at 18; *see also* Ex. 52 at F15.	initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to develop any particular policies, processes, procedures, or guidance related to [redacted] The Order requires Meta to "[d]esign, implement, maintain, and document safeguards that control for the material and external risks identified by Respondent in response to Part VII.D." In developing [redacted] Meta affirmatively chose to implement procedures beyond those specifically required by the Order. The Order does not require Meta to develop [redacted] ● It mischaracterizes the Assessor's observation regarding [redacted][1932] ● It does not include details available to the Commission regarding Meta's enhancements to [redacted]

[1932] *See id.* at 18, 144.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1933] • It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1934]
Paragraph 963(b) 963. The Assessor identified [redacted] b. [redacted] i. [redacted][1007] ii. For example, Facebook [redacted]	**Paragraph 963(b)** purports to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: • Nothing in Part VII of the Order required Meta to develop any particular policies, processes, procedures, or guidance related to [redacted] The Order requires Meta to "[d]esign, implement, maintain, and document safeguards that control for the material and external risks identified by Respondent in response to Part VII.D." In developing [redacted], Meta affirmatively chose to implement procedures beyond

[1933] *See* Ex. 52 [redacted] at F15.

[1934] *See* Ex. 4 (2021 Assessment Report) at 18, 144.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted]1008 iii. During testing, the Assessor noted [redacted]1009 iv. Specifically, the Assessor noted that [redacted]1010 v. [redacted]1011	those specifically required by the Order. ● It does not include details available to the Commission, such as that [redacted]1935 [redacted]1936 [redacted]1937 [redacted]1938 [redacted]1939

1935 *See* Ex. 5 (Oct. 29, 2021 resp. to Sept. 5, 2021 request 11) at 32–33.

1936 *Id.* (emphasis added).

1937 *Id.*

1938 *Id.*

1939 *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
vi. The Assessor concluded that [redacted][1012] vii. [redacted][1013] viii. [redacted]	[redacted] ● It mistakenly asserts that Meta was updating its [redacted][1940] ● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1941]

[1940] *Id.*

[1941] *See* Ex. 4 (2021 Assessment Report) at 104.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1014] ix. [redacted][1015] x. [redacted][1016] *** [1007] Ex. 4 at 161. [1008] Ex. 5 at 32 (Oct. 29, 2021 resp. to Sept. 5, 2021 request 11); *see also* Ex. 4 at 197 [redacted] 200 [redacted] [1009] Ex. 4 at 161. [1010] Ex. 4 at 161. [1011] Ex. 4 at 161. [1012] Ex. 4 at 161. [1013] Ex. 5 at 32 (Oct. 29, 2021 resp. to Sept. 5, 2021 request 11). [1014] Ex. 5 at 32 (Oct. 29, 2021 resp. to Sept. 5, 2021 request 11). [1015] Ex. 10 at 6 (Oct. 15, 2021 resp. to Sept. 1, 2021 request 13). [1016] Ex. 10 at 6 (Oct. 15, 2021 resp. to Sept. 1, 2021 request 13).	

Preliminary Findings of Fact (PFOF)	Response to PFOF
Paragraph 964 964. The Assessor identified [redacted] a. [redacted] i. The Assessor found that the [redacted][1017] *** [1017] Ex. 4 at 19; *see also* Ex. 52 at F19.	**Paragraph 964** purports to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to develop any particular policies, processes, procedures, or guidance related to [redacted] The Order requires Meta to "[d]esign, implement, maintain, and document safeguards that control for the material and external risks identified by Respondent in response to Part VII.D." In developing [redacted] Meta affirmatively chose to implement procedures beyond those specifically required by the Order. The Order does not require Meta to [redacted] ● It does not include details available to the Commission that [redacted][1942]

[1942] *See* Ex. 14 (Jan. 11, 2022 resp. to Dec. 3, 2021 request 10) at 23, 25.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1943] [redacted][1944] • It fails to clarify that [redacted][1945] [redacted][1946]

[1943] *Id.* at 25.

[1944] *Id.* at 24.

[1945] *Id.* at 24–25.

[1946] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1947] ● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1948]
Paragraphs 965–67 965. As part of its privacy program, Facebook documented [redacted][1018] 966. During the assessment, Facebook [redacted][1019] 967. [redacted][1020] ***	**Paragraphs 965–67** purport to describe certain Assessor observations about Meta's [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to [redacted] ● They fail to mention that the Assessor acknowledged that Meta was [redacted][1949]

[1018] Ex. 4 at 162; Ex. 5 at 33 (Oct. 29, 2021 resp. to

[1947] *Id.* at 23–25.

[1948] *See* Ex. 4 (2021 Assessment Report) at 41.

[1949] Ex. 5 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 14) at 33; Ex. 4 (2021 Assessment Report) at 162. [redacted]

Preliminary Findings of Fact (PFOF)	Response to PFOF
Sept. 1, 2021 request 14). [1019] Ex. 4 at 162; Ex. 5 at 33 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 14). [1020] Ex. 5 at 34 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 14).	• [redacted], which include but are not limited to implementing its [redacted] that are designed to filter out the data they detect that is sent via the Meta Pixel, SDK, and other Meta Business Tools, that Meta's systems classify as *potentially* sensitive health data, *potentially* sensitive financial data, or *potential* personally identifiable information that is not hashed or not authorized for sending before that data is stored and used in Meta's advertising systems.[1950] • Beyond this, at the time of the initial Assessment, [redacted] ○ [redacted]

[redacted] *See* Ex. D (2023 Assessment Report) at 347. [redacted] Meta chose to implement controls and procedures beyond those specifically required by Part VII of the Order.

[1950] Ex. 5 (Oct. 29, 2021 resp. to Sept. 1, 2021 request 14) at 34.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted]1951
Paragraphs 968–69 968. [redacted]1021 969. The Assessor reported that [redacted]	**Paragraphs 968–69** purport to set forth the Assessor's observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to develop any particular policies, processes, procedures, or guidance related to [redacted]

1951 *See id.* at 33–41; Ex. 4 (2021 Assessment Report) at 162.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1022] *** [1021] Ex. 4 at 19. [1022] Ex. 4 at 19.	[redacted] The Order requires Meta to "[d]esign, implement, maintain, and document safeguards that control for the material and external risks identified by Respondent in response to Part VII.D." In developing [redacted] Meta affirmatively chose to implement procedures beyond those specifically required by the Order. ● They do not refer to Meta's implementation, in response to the Order, of what the Assessor described as a "foundational redesign of both its Safeguard environment and compliance documentation."[1952] In addition to the implementation of [redacted] safeguards by October 25, 2020, and a further [redacted] safeguards throughout the Assessment period, the Assessor noted that Meta "published more than [redacted] privacy governing documents and approximately an additional [redacted] privacy-focused policies, playbooks, procedures, tools, templates, and guidelines."[1953] ● They do not include details available to the Commission, including those Meta provided between December 23, 2021 and February 18, 2022.[1954] In at least one case the Assessor withdrew its initial statement about [redacted] after discussion with Meta and further review of the relevant evidence. *See* Response to Paragraph

[1952] Ex. 4 (2021 Assessment Report) at 15.

[1953] *Id.*

[1954] *See infra* Section IV.I, Resp. to PFOF ¶¶ 970(a –75.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	973(b).[1955] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1956]
Paragraph 970(a) 970. The Assessor identified [redacted] a. [redacted] i. During the Assessor's interviews, [redacted][1023] ii. The Assessor stated [redacted][1024] iii. However, during the Assessor's review, [redacted]	**Paragraph 970(a)** purports to describe certain Assessor observations about Meta's [redacted] as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to develop any particular policies, processes, procedures, or guidance related to [redacted] The Order requires Meta to "[d]esign, implement, maintain, and document safeguards that control for the material and external risks identified by Respondent in response to Part VII.D." The Order does not require Meta to adopt any specific approach for conducting [redacted]. In developing [redacted] Meta affirmatively chose to implement procedures beyond those specifically required by the Order.

[1955] Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 10.vii) at 19.

[1956] Ex. 4 (2021 Assessment Report) at 15.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1025] iv. [redacted][1026] ***	• It falsely asserts that, during the Assessment, Meta did not have [redacted][1957][1958] • It fails to mention how Meta enhanced

[1023] Ex. 53 at F2.
[1024] Ex. 53 at F2.
[1025] Ex. 53 [redacted] at F2; *see also* Ex. 4 at 80.
[1026] Ex. 53 at F2.

[1957] *See* Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 10.i) at 14.

[1958] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][1959] ● It fails to clarify that neither the Commission nor the Assessor have identified any harm to or impact on users in connection with the Assessor's observations described herein.[1960]
Paragraph 970(b) 970. The Assessor identified [redacted]: b. [redacted] i. The Assessor noted that, [redacted]	**Paragraph 970(b)** purports to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to develop any particular policies, processes, procedures, or guidance related to [redacted] The Order requires Meta to "[d]esign, implement, maintain, and document safeguards that control for the material and external risks identified by

[1959] *Id.* at 15.

[1960] Ex. 4 (2021 Assessment Report) at 15.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1027] ii. In its February 18, 2022, response, Facebook [redacted][1028] *** [1027] Ex. 53 at F3. [1028] Ex. 51 at 15 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 10.ii).	Respondent in response to Part VII.D." In developing [redacted] Meta affirmatively chose to implement procedures beyond those specifically required by the Order. ● It fails to mention that [redacted] It also omits that Meta has established additional processes and [redacted] since the Assessment, and has continued to improve [redacted][1961] ● It fails to mention that [redacted] ● It fails to mention that Meta [redacted] as

[1961] *See* Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 10.ii) at 15–16.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	described in greater detail in Meta's Part XV responses.[1962] ● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1963]
Paragraph 971 971. The Assessor identified [redacted] a. [redacted] i. [redacted] [1029] ii. According to Facebook, IDR uses [redacted] a case management tool, to identify, track, and document potential IAA violations.[1030] iii. The Assessor further noted that [redacted]	**Paragraph 971** purports to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to develop any particular policies, processes, procedures, or guidance related to [redacted] The Order requires Meta to "[d]esign, implement, maintain, and document safeguards that control for the material and external risks identified by Respondent in response to Part VII.D." In developing [redacted], Meta affirmatively chose to implement procedures beyond those specifically required by the Order. The Order does not require Meta to [redacted]

[1962] *Id.*

[1963] Ex. 4 (2021 Assessment Report) at 70.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1031] iv. The Assessor observed for [redacted][1032] v. In its February 18, 2022, response, Facebook [redacted][1033] vi. In its February 18, 2022, response, Facebook stated that, [redacted]	• It fails to mention that [redacted][1964][1965] • It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's

[1964] Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022, request 10.iii) at 16.

[1965] *See id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1034] *** [1029] Ex. 53 at F14; see also Ex. 4 at 19. [1030] Ex. 51 at 16 n.23 (Feb. 18, 2022 resp. to Jan. 10, 2022, request 10.iii). [1031] Ex. 53 at F14. [1032] Ex. 53 at F14. [1033] Ex. 51 at 16 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 10.ii). [1034] Ex. 51 at 16 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 10.ii).	observations described herein.[1966]
Paragraph 972 972. The Assessor identified [redacted] a. [redacted] i. The Assessor found that [redacted][1035] ii. The Assessor found that, [redacted]	**Paragraph 972** purports to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to develop any particular policies, processes, procedures, or guidance related to [redacted] The Order requires Meta to "[d]esign, implement, maintain, and document safeguards that control for the material and external risks identified by Respondent in response to Part VII.D." In developing [redacted]

[1966] Ex. 4 (2021 Assessment Report) at 103.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1036] iii. Furthermore, the Assessor found [redacted][1037] iv. In its February 18, 2022, response, Facebook [redacted]	[redacted] Meta affirmatively chose to implement procedures beyond those specifically required by the Order. The Order does not require Meta to develop [redacted] ● They omit information regarding Meta's efforts to consult with, and seek appropriate guidance from, independent, third-party experts on data protection and privacy in accordance with Part VII.I of the Order. Specifically, the Assessor observed that [redacted][1967] While not required by the Order, Meta exceeded Order obligations [redacted][1968] ● It implies that [redacted]

[1967] *Id*. at 22.

[1968] *Id*. at 24.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1038] v. In its February 18, 2022, response, Facebook also stated that, in October 2021, it updated the relevant safeguard documentation "to clarify the information necessary to fully and appropriately document each type of external engagement pursuant to [redacted]."[1039] b. [redacted] i. The Assessor found that [redacted][1040] ii. The Assessor found that, [redacted]	[redacted] ● It fails to describe in full the steps Meta took to improve its [redacted][1969] As a result, the Assessor found that the issues that it had identified related to [redacted][1970]

[1969] Ex. 31 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 10.iv, 10.v) at 18.

[1970] *See* Ex. D (2023 Assessment Report) at 36.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1041] iii. The Assessor further found that [redacted][1042] iv. In its February 18, 2022, response, Facebook [redacted][1043]. v. In its February 18, 2022,	[redacted][1971] ● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1972]

[1971] *Id.* at 17–18.

[1972] Ex. 4 (2021 Assessment Report) at 167.

Preliminary Findings of Fact (PFOF)	Response to PFOF
response, Facebook [redacted] [1044] vi. In its February 18, 2022, response, Facebook [redacted] [1045] vii. In its February 18, 2022, response, Facebook also stated that, in October 2021, it updated the relevant Safeguard documentation "to clarify the information necessary to fully and appropriately document . . . the related standard for the quarterly Qualify Assurance reviews of external engagement documentation pursuant to [redacted] [1046] *** [1035] Ex. 53 at F9. [1036] Ex. 53 at F9; *see also* Ex. 4 at 24-25. [1037] Ex. 53 at F9; *see also* Ex. 4 at 24-25. [1038] Ex. 51 at 16 (Feb. 18, 2022 resp. to Jan. 10, 2022 requests 10.iv and 10.v).	

Preliminary Findings of Fact (PFOF)	Response to PFOF
[1039] Ex. 51 at 17 (Feb. 18, 2022 resp. to Jan. 10, 2022 requests 10.iv and 10.v). [1040] Ex. 53 at F13; *see also* Ex. 4 at 24-25. [1041] Ex. 53 at F13; *see also* Ex. 4 at 24-25. [1042] Ex. 53 at F13. [1043] Ex. 51 at 16 (Feb. 18, 2022 resp. to Jan. 10, 2022 requests 10.iv and 10.v). [1044] Ex. 51 at 16 (Feb. 18, 2022 resp. to Jan. 10, 2022 requests 10.iv and 10.v). [1045] Ex. 51 at 16–17 (Feb. 18, 2022 resp. to Jan. 10, 2022 requests 10.iv and 10.v). [1046] Ex. 51 at 17 (Feb. 18, 2022 resp. to Jan. 10, 2022 requests 10.iv and 10.v).	
Paragraph 973(a) 973. The Assessor identified [redacted] a. [redacted] i. According to the Assessor, [redacted] [1047] ii. [redacted]	**Paragraph 973(a)** purports to describe certain Assessor observations about [redacted] safeguard, as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to develop any particular policies, processes, procedures, or guidance related to [redacted] The Order requires Meta to "[d]esign, implement, maintain, and document safeguards that control for the material and external risks identified by Respondent in response to Part VII.D." In developing [redacted] Meta affirmatively chose to implement procedures beyond those specifically required by the Order. The Order does not require Meta to [redacted]

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted] [redacted][1048] iii. In its February 18, 2022, response, Facebook [redacted] [redacted][1049] *** [1047] Ex. 53 at F11. [1048] Ex. 53 at F11. [1049] Ex. 51 at 18 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 10.vi .	[redacted] ● It fails to mention that, after the Assessment, Meta [redacted][1973] [redacted][1974] [redacted][1975] ● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1976]

[1973] *See* Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 10.vi) at 18.

[1974] *See id.*; Ex. 17 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 2) at 14–15.

[1975] Ex. 17 (Dec. 23, 2021 resp. to Nov. 24, 2021 request 2) at 15–16.

[1976] Ex. 4 (2021 Assessment Report) at 209–10.

Preliminary Findings of Fact (PFOF)	Response to PFOF
Paragraph 973(b) 973. The Assessor identified [redacted] b. [redacted] i. The Assessor noted that [redacted] 1050 ii. According to the Assessor, [redacted] 1051 iii. [redacted]	**Paragraph 973(b)** purports to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to develop any particular policies, processes, procedures, or guidance related to [redacted] The Order requires Meta to "[d]esign, implement, maintain, and document safeguards that control for the material and external risks identified by Respondent in response to Part VII.D." [redacted] Meta affirmatively chose to implement procedures beyond those specifically required by the Order. The Order does not require Meta to [redacted] ● It mistakenly asserts that [redacted]

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted] iv. [redacted][1052] v. According to the Assessor, [redacted][1053]	[redacted][1977] ● It fails to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1978]

[1977] *See* Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 10.vii) at 19.

[1978] *See id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
vi. The Assessor noted that [redacted][1054] *** [1050] Ex. 53 at F23. [1051] Ex. 53 at F23. [1052] Ex. 53 at F23. [1053] Ex. 53 at F23. [1054] Ex. 53 at F23.	
Paragraph 974 974. The Assessor identified [redacted] a. [redacted] i. The Assessor noted [redacted][1055] ii. [redacted]	**Paragraph 974** purports to describe certain Assessor observations about [redacted], as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to develop any particular policies, processes, procedures, or guidance related to [redacted] The Order requires Meta to "[d]esign, implement, maintain, and document safeguards that control for the material and external risks identified by Respondent in response to Part VII.D." In developing [redacted] Meta affirmatively

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1056] iii. The Assessor found that, [redacted][1057] iv. The Assessor noted that, [redacted][1058] v. The Assessor stated [redacted][1059]	chose to implement procedures beyond those specifically required by the Order. The Order does not require Meta to [redacted] ● It fails to mention the extent to which Meta [redacted][1979] ● It fails to mention that the Assessor found that [redacted][1980] ● It fails to recognize that Meta addressed the Assessor's observations through [redacted]

[1979] *See* Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 10.viii) at 19–20.

[1980] *See* Ex. 53 [redacted] at F26.

Preliminary Findings of Fact (PFOF)	Response to PFOF
vi. [redacted][1060] vii. The Assessor also observed that [redacted][1061] viii. [redacted]	[redacted][1981] ● It falsely presents [redacted][1982] ● It wrongly implies that [redacted] ● It fails to clarify that neither the

[1981] *See* Ex. 51 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 10.viii) at 19–20.

[1982] *See* Ex. 53 [redacted] at F26.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1062] ix. The Assessor noted that [redacted][1063] x. In its February 18, 2022, response, Facebook [redacted]	Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1983]

[1983] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1064] xi. In its February 18, 2022, response, Facebook [redacted][1065] xii. In its February 18, 2022, response, Facebook [redacted][1066] xiii. In its February 18, 2022, response, Facebook stated [redacted][1067] *** [1055] Ex. 53 at F26. [1056] Ex. 53 at F26. [1057] Ex. 53 at F26.	

Preliminary Findings of Fact (PFOF)	Response to PFOF
[1058] Ex. 53 at F26. [1059] Ex. 53 at F26. [1060] Ex. 53 at F26. [1061] Ex. 53 at F26. [1062] Ex. 53 at F26. [1063] Ex. 53 at F26. [1064] Ex. 51 at 19 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 10.viii). [1065] Ex. 51 at 19 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 10.vi . [1066] Ex. 51 at 19 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 10.vi . [1067] Ex. 51 at 19–20 (Feb. 18, 2022 resp. to Jan. 10, 2022 request 10.vi).	
Paragraph 975 975. The Assessor identified [redacted] a. [redacted] i. [redacted] [1068] ii. [redacted]	**Paragraph 975** purports to describe certain Assessor observations about [redacted], as reflected in the initial Assessment Report. This paragraph is inaccurate and, in any case, does not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to develop any particular policies, processes, procedures, or guidance related to [redacted] The Order requires Meta to "[d]esign, implement, maintain, and document safeguards that control for the material and external risks identified by Respondent in response to Part VII.D." In developing [redacted] Meta affirmatively chose to implement procedures beyond those specifically required by the Order. The Order does not require Meta to [redacted]

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1069] ***	[redacted] ● It fails to mention that [redacted][1984] ● Additionally, it fails to acknowledge [redacted][1985] [redacted][1986] ● It fails to clarify that neither the Commission nor the Assessor has

[1068] Ex. 4 at 19; *see also* Ex. 53 at F29.
[1069] Ex. 4 at 19; *see also* Ex. 53 at F29.

[1984] *See* Ex. 53 [redacted] at F29.

[1985] *Id.* at M29.

[1986] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	identified any harm to or impact on users in connection with the Assessor's observations described herein.[1987]
Paragraphs 976–78 976. The Assessor found that, [redacted][1070] 977. The Assessor also found [redacted][1071] 978. According to the Assessor, [redacted][1072] *** [1070] Ex. 4 at 19. [1071] Ex. 4 at 19. [1072] Ex. 4 at 19.	**Paragraphs 976–78** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to develop any particular policies, processes, procedures, or guidance related to [redacted] The Order requires Meta to "[d]esign, implement, maintain, and document safeguards that control for the material and external risks identified by Respondent in response to Part VII.D." In developing processes such as evidence guidance pursuant to the documentation of its safeguards, Meta affirmatively chose to implement procedures beyond those specifically required by the Order. The Order does not require Meta to implement any [redacted] ● They do not include details available to the Commission regarding Meta's

[1987] *See id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	efforts to enhance its [redacted][1988] ● They fail to account for Meta's remediation efforts to address the gaps identified by the Assessor. The 2023 Assessment Report recognized that Meta implemented, [redacted][1989] In addition, the Assessor noted that [redacted][1990]

[1988] *See* Ex. 51 (Feb. 18, 2022 resp. to Dec. 2, 2021 request 11) at 4.

[1989] Ex. D (2023 Assessment Report) at 28.

[1990] *Id.* at 29.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	• They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations described herein.[1991]
L. Complaints & Issue Management (¶¶ 979–1028)	
Paragraphs 979–84 979. Part VII.E of the 2020 Order requires Facebook to "[d]esign, implement, maintain, and document safeguards that control for the material internal and external risks identified by Respondent in response to Part VII.D. Each safeguard shall be based on the volume and sensitivity of the Covered Information that is at risk, and the likelihood that the risk could be realized and result in the unauthorized access, collection, use, destruction, or disclosure of the Covered Information."[1073] 980. Facebook's Complaints and Issue Management control domain [redacted][1074] 981. [redacted][1075]	**Paragraphs 979–84** purport to set forth the scope of Meta's Complaints & Issue Management domain, as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: • Nothing in Part VII of the Order required Meta to [redacted] In creating [redacted] Meta affirmatively chose to implement safeguards and processes beyond those specifically required by the Order. • Paragraph 982 suggests that [redacted]

[1991] *See id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
982. [redacted][1076] 983. [redacted][1077] 984. [redacted][1078] *** [1073] Ex. 3, Part VII.E. [1074] Ex. 4 at 31. [1075] Ex. 4 at 31. [1076] Ex. 4 at 31. [1077] Ex. 4 at 31; *see also* Ex. 4 at 163, 169–170 [redacted] relating to the Complaints and Issue Management Control Domain). [1078] Ex. 4 at 31.	[redacted][1992]
Paragraphs 985–1005 985. Facebook's Global Privacy Operations team maintains a process for receiving, handling, resolving, monitoring, and reporting external inquiries regarding Facebook's privacy practices.[1079] 986. A user can submit an external inquiry, [redacted][1080] 987. [redacted]	**Paragraphs 985–1005** purport to describe certain Assessor observations about Meta's [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta failed to meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to [redacted]

[1992] *See* Ex. 4 (2021 Assessment Report) at 33.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1081] 988. [redacted] a. [redacted][1082] b. [redacted][1083] c. [redacted][1084] and d. [redacted][1085]	[redacted] In creating [redacted] Meta affirmatively chose to implement safeguards and processes beyond those specifically required by the Order. ● Paragraph 985 refers only to [redacted] The Assessor specified that [redacted][1993] ● Paragraphs 994 and 955 fail to expressly recognize that Meta's [redacted]. In addition, they fail to note that [redacted] ● Paragraph 1003 does not account for the Assessor's determination that [redacted]

[1993] Ex. 4 (2021 Assessment Report) at 31 (emphasis added).

Preliminary Findings of Fact (PFOF)	Response to PFOF
989. [redacted] the Assessor confirmed that [redacted][1086]	[redacted] as noted in Paragraph 989.[1994] ● Paragraphs 1003 and 1004 fail to note that [redacted][1995][1996] ● [redacted][1997] ● These paragraphs fail to account for Meta's remediation efforts to address the gaps identified by the Assessor. ○ The Assessor observed that [redacted]
990. According to the Assessor, [redacted][1087]	
991. According to the Assessor, [redacted][1088]	
992. According to the Assessor, [redacted][1089]	
993. During the Assessment Period, [redacted][1090]	

[1994] *See id.* at 37. This is acknowledged in Paragraph 991.

[1995] Ex. D (2023 Assessment Report) at 45 (emphasis added).

[1996] *Id.* at 51.

[1997] *See id.* at 45.

Preliminary Findings of Fact (PFOF)	Response to PFOF
994. Based on its testing, the Assessor determined [redacted][1091]	[redacted][1998] ○ The Assessor also stated that [redacted][1999]
995. Moreover, the Assessor [redacted][1092]	○ In particular, the Assessor noted that, [redacted][2000]
996. [redacted][1093]	○ [redacted]
997. The Assessor also noted [redacted][1094]	
998. The Assessor identified [redacted][1095]	

[1998] *See id.* at 48–49.

[1999] *Id.* at 49.

[2000] *Id*. at 45.

Preliminary Findings of Fact (PFOF)	Response to PFOF
999. [redacted] [1096] 1000. The Assessor stated that [redacted] [1097] 1001. During operational effectiveness testing, [redacted] [1098] 1002. [redacted] [1099] 1003. Facebook also acknowledged [redacted] [1100]	[redacted] [2001] ● Paragraphs 996 and 1005 refer to a now deprecated Safeguard, as noted in Paragraph 1005. ● These paragraphs fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding Meta's [redacted] described herein.[2002]

[2001] *Id.* at 17, 47.

[2002] *See* Ex. 4 (2021 Assessment Report) at 36–38.

Preliminary Findings of Fact (PFOF)	Response to PFOF
1004. According to the Assessor, [redacted][1101] 1005. [redacted][1102] *** [1079] Ex. 4 at 31. [1080] Ex. 4 at 31. [1081] Ex. 4 at 36. [1082] Ex. 4 at 36–37. [1083] Ex. 4 at 37. [1084] Ex. 4 at 37. [1085] Ex. 4 at 36–37. [1086] Ex. 4 at 37. [1087] Ex. 4 at 37. [1088] Ex. 4 at 37. [1089] Ex. 4 at 37. [1090] Ex. 4 at 37. [1091] Ex. 4 at 37. [1092] Ex. 4 at 37. [1093] Ex. 4 at 37. [1094] Ex. 4 at 37. [1095] Ex. 4 at 37. [1096] Ex. 4 at 37. [1097] Ex. 4 at 37. [1098] Ex. 4 at 37. [1099] Ex. 4 at 37. [1100] Ex. 4 at 37. [1101] Ex. 4 at 38. [1102] Ex. 4 at 38.	
Paragraphs 1006–12 1006. According to the Assessor, [redacted]	**Paragraphs 1006–12** purport to describe certain Assessor observations about Meta's [redacted]

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1103] 1007. The Assessor also stated that [redacted][1104] 1008. During its assessment, the Assessor identified [redacted][1105] 1009. [redacted][1106] 1010. [redacted][1107] 1011. [redacted][1108]	[redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements, because: ● Nothing in Part VII of the Order required Meta to [redacted] In creating [redacted] Meta affirmatively chose to implement safeguards and processes beyond those specifically required by the Order. ● Paragraphs 1010 and 1011 imply that Meta did not conduct [redacted] Instead, during the initial Assessment, [redacted][2003] ● These paragraphs fail to account for Meta's remediation efforts in connection with the [redacted] ○ In the 2023 Assessment Report, the Assessor stated that [redacted]

[2003] *Id.* at 36.

Preliminary Findings of Fact (PFOF)	Response to PFOF
1012. According to the Assessor, [redacted][1109] *** [1103] Ex. 4 at 38. [1104] Ex. 4 at 38. [1105] Ex. 4 at 38. [1106] Ex. 4 at 32. [1107] Ex. 4 at 38. [1108] Ex. 4 at 38. [1109] Ex. 4 at 38.	[redacted][2004] ○ With respect to Meta's [redacted] the Assessor observed that [redacted][2005] [redacted][2006] ○ As such, the purported issues referenced are no longer applicable, and no such issues have been identified during the 2023 Assessment. ● These paragraphs fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding Meta's [redacted] as reflected

[2004] *See* Ex. D (2023 Assessment Report) at 49.

[2005] *Id.* at 49.

[2006] *Id.* at 45.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	in the initial Assessment Report described herein.[2007]
Paragraphs 1013–20 1013. [redacted][1110] 1014. The Assessor observed [redacted][1111] 1015. The Assessor noted [redacted][1112] 1016. The Assessor determined [redacted][1113] 1017. According to the Assessor, [redacted][1114]	**Paragraphs 1013–20** purport to describe certain Assessor observations about Meta's [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta failed to meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to [redacted] Meta affirmatively chose to implement safeguards and processes beyond those specifically required by the Order. ● Paragraphs 1014 and 1015 reflect that, [redacted][2008] Specifically, in the 2023 Assessment Report, the Assessor acknowledged that the issue [redacted]

[2007] *See* Ex. 4 (2021 Assessment Report) at 36, 38.

[2008] *See* Ex. D (2023 Assessment Report) at 45.

Preliminary Findings of Fact (PFOF)	Response to PFOF
1018. The Assessor also determined [redacted][1115] 1019. The Assessor observed [redacted][1116] 1020. As a result, the Assessor noted [redacted][1117] *** [1110] Ex. 4 at 38. [1111] Ex. 4 at 38. [1112] Ex. 4 at 38. [1113] Ex. 4 at 38. [1114] Ex. 4 at 38. [1115] Ex. 4 at 38. [1116] Ex. 4 at 38. [1117] Ex. 4 at 38.	[redacted][2009] ● Paragraphs 1016–20 fail to reflect Meta's remediation efforts to [redacted] In the 2023 Assessment Report, the Assessor noted that [redacted][2010][2011] ● These paragraphs fail to acknowledge that Meta [redacted] In the 2023 Assessment Report, the Assessor acknowledged that [redacted]

[2009] *Id.* at 49, 45.

[2010] *Id.* at 49

[2011] *Id*. at 45.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][2012] In addition, the Assessor noted that [redacted][2013] ● These paragraphs fail to acknowledge that [redacted] In the 2023 Assessment Report, the Assessor noted that [redacted][2014] ● These paragraphs fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding

[2012] *Id.* at 45–46.

[2013] *Id.* at 46.

[2014] *Id.* at 49 (emphasis added).

Preliminary Findings of Fact (PFOF)	Response to PFOF
	Meta's [redacted] described herein.[2015]
Paragraphs 1021–28 1021. According to the Assessor, [redacted][1118] 1022. The Assessor noted [redacted][1119] 1023. The Assessor [redacted][1120] 1024. [redacted]	**Paragraphs 1021–28** purport to describe Assessor observations about Meta's [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII's requirements because: ● Nothing in Part VII of the Order required Meta to [redacted] Meta affirmatively chose to implement safeguards and processes beyond those specifically required by the Order. ● These paragraphs include [redacted] ● These paragraphs fail to note that the Assessor additionally noted again [redacted] **by**

[2015] *See* Ex. 4 (2021 Assessment Report) at 36, 38.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1121] 1025. [redacted][1122] 1026. The Assessor noted [redacted][1123] 1027. [redacted][1124] 1028. [redacted][1125] ***	[redacted][2016] • These paragraphs fail to provide context on additional efforts Meta has made to expand [redacted] In particular, the Assessor has noted that Meta [redacted][2017] • These paragraphs fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding Meta's [redacted] described herein.[2018]

[1118] Ex. 4 at 39.
[1119] Ex. 4 at 39.
[1120] Ex. 4 at 39.
[1121] Ex. 4 at 39.
[1122] Ex. 4 at 39.
[1123] Ex. 4 at 39.
[1124] Ex. 4 at 39.
[1125] Ex. 4 at 39.

[2016] *See* Ex. D (2023 Assessment Report) at 49.

[2017] *See id.* at 53.

[2018] *See* Ex. 4 (2021 Assessment Report) at 39.

Preliminary Findings of Fact (PFOF)	Response to PFOF
M. Governance (¶¶ 1029–66)	
Paragraphs 1029–35 1029. Facebook designed the Governance Control Domain "to implement key governing activities for the Mandated Privacy Program" under Parts VII.B, VII.C, VII.E, and VII.I of the 2020 Order.[1126] 1030. Specifically, Part VII.E. of the Order requires Facebook to "[d]esign, implement, maintain, and document safeguards that control for the material internal and external risks identified by Respondent in response to Part VII.D. Each safeguard shall be based on the volume and sensitivity of the Covered Information that is at risk, and the likelihood that the risk could be realized and result in the unauthorized access, collection, use, destruction, or disclosure of the Covered Information."[1127] 1031. Part VII.I. of the Order requires Facebook to "[c]onsult with, and seek appropriate guidance from, independent, third-party experts on data protection and privacy in the course of establishing, implementing, maintaining, and updating the Privacy Program."[1128] 1032. To comply with these Order provisions, Facebook established the Compensating, Nominating, and Governance Committee, as well as the Privacy Committee.[1129] 1033. Facebook's Governance Control Domain also covers [redacted]	**Paragraphs 1029–35** purport to set forth the scope of Meta's Governance Domain created in response to Parts VII.B, VII.C, VII.E, and VII.I of the 2020 Order, as it existed during the initial six-month Assessment. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII requirements because: ● They do not include details regarding the entirety of Meta's Governance activities. In addition to the processes described in Paragraph 1029, Meta's Governance Domain encompasses: (1) the designation of the Designated Compliance Officer ("DCO"), as required by Section VII.C of the Order, to coordinate the Privacy Program; and [redacted] through which Meta evaluates and adjusts the Privacy Program, as required by Section VII.J of the Order. ● The inclusion of the references in Paragraph 1032 to the Compensating, Nominating, and Governance Committee ("CNGC") and Privacy Committee of Meta's Board of Directors suggests that Meta established these committees to address the requirements of Part VII of the Order listed in this section. To the contrary, *Part X* of the Order requires the creation of an "Independent Privacy Committee" and an "Independent Nominating Committee."[2019] Because

[2019] *See* Order, Parts X.A & X.B.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1130] 1034. Additionally, Facebook engaged external experts on a variety of different topics, including privacy, to comply with Part VII.I of the Order.[1131] 1035. [redacted][1132] *** [1126] Ex. 4 at 20. [1127] Ex. 3, Part VII.E. [1128] Ex. 3, Part VII.I. [1129] Ex. 4 at 20. [1130] Ex. 4 at 20. [1131] Ex. 4 at 22. [1132] Ex. 4 at 20, 163–167 [redacted] relating to the Governance Control Domain .	the Assessor found that the CNGC and Privacy Committees "are related to compliance with the Legal and administrative requirements of the Order rather than mitigating risks identified in the risk assessment or addressing expected elements of a comprehensive privacy program," the Assessor deemed them to be outside the scope of Part VII of the Order and the Assessment.[2020] ● The reference in Paragraph 1035 to [redacted] safeguards within the Governance Control Domain [redacted][2021]
Paragraphs 1036–44 1036. [redacted]	**Paragraphs 1036–44** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report.

[2020] *See* Ex. 4 (2021 Assessment Report) at 21; *see also* Ex. D (2023 Assessment Report at 30 n.2.

[2021] *See* Ex. 4 (2021 Assessment Report) at 167.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1133] 1037. [redacted][1134] 1038. [redacted][1135] 1039. [redacted][1136] 1040. At the time of the Assessment, [redacted][1137] 1041. At the time of the Assessment, [redacted][1138] 1042. The Assessor [redacted][1139]	These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII requirements because: ● Nothing in Part VII of the Order required Meta to [redacted] In creating [redacted] Meta affirmatively chose to implement safeguards and processes beyond those specifically required by the Part VII of the Order.[2022] ● They note [redacted][2023] codifies or sets forth guidelines related to the operation of this [redacted] function. As explained to the Commission, during the initial six-month Assessment period in 2020-2021, [redacted]

[2022] *See supra* Section I.A.6.l ¶¶ 67–71.

[2023] Ex. 4 (2021 Assessment Report) at 24.

Preliminary Findings of Fact (PFOF)	Response to PFOF
1043. [redacted][1140] 1044. [redacted][1141] *** [1133] Ex. 4 at 24. [1134] Ex. 4 at 24. [1135] Ex. 4 at 23–24. [1136] Ex. 4 at 24. [1137] Ex. 4 at 24. [1138] Ex. 4 at 24. [1139] Ex. 4 at 24. [1140] Ex. 4 at 24. [1141] Ex. 4 at 24.	[redacted][2024] • The Assessor made no finding [redacted][2025] • They do not include details [redacted][2026] • They omit details [redacted] In its report related to the initial six-month Assessment period in 2020-2021, the Assessor noted that Meta was [redacted]

[2024] Ex. 14 (Jan. 11, 2022 resp. to Oct. 14, 2021 requests 1–3) at 9.

[2025] *See* Ex. 4 (2021 Assessment Report) at 23–24.

[2026] *See* Ex. 14 (Jan. 11, 2022 resp. to Oct. 14, 2021 requests 1–3) at 7–10.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted][2027] Indeed, Meta has adopted [redacted][2028] ● To the extent that Paragraph 1039 purports to describe [redacted][2029] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations [redacted] described herein.[2030]
Paragraphs 1045–51 1045. The Assessor determined [redacted][1142]	**Paragraphs 1045–51** purport to describe certain Assessor observations [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII requirements because:

[2027] Ex. 4 (2021 Assessment Report) at 24.

[2028] Ex. D (2023 Assessment Report) at 36.

[2029] Ex.4 (2021 Assessment Report) at 22.

[2030] *See id*. at 24.

Preliminary Findings of Fact (PFOF)	Response to PFOF
1046. According to the Assessor, [redacted][1143] 1047. According to the Assessor, the Privacy and Data Policy team "identified and engaged with independent privacy experts throughout the development and enhancement of the Privacy Program.[1144] 1048. The Assessor stated that experts include external, independent individuals who have a background and focus in data protection, privacy, and compliance, including from industry, academia, and non-governmental organizations.[1145] 1049. According to the Assessor, [redacted][1146] 1050. The Assessor also noted [redacted][1147] 1051. [redacted]	• Paragraphs 1045–51 imply that the cited findings are related to obligations under Part VII.I. of the Order. Part VII.I of the Order requires Meta to consult with, and seek appropriate guidance from, independent, third-party experts on data protection and privacy, but does not require Meta to [redacted] In adopting the [redacted] Meta affirmatively chose to implement procedures beyond those specifically required by the Order. • They omit information regarding [redacted] in accordance with Part VII.I of the Order. Specifically, while Paragraph 1047 notes the Assessor's observations that Meta "identified and engaged with independent privacy experts throughout the development and enhancement of the Privacy Program,"[2031] [redacted][2032] While not required by the Order, Meta exceeded Order obligations and created the [redacted]

[2031] *Id.* at 22.

[2032] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1148] *** [1142] Ex. 4 at 24. [1143] Ex. 4 at 24. [1144] Ex. 4 at 22. [1145] Ex. 4 at 22. [1146] Ex. 4 at 24. [1147] Ex. 4 at 24. [1148] Ex. 4 at 24.	[redacted][2033] ● They do not include details on Meta's efforts to [redacted][2034] As a result, the Assessor found that the issues that it had identified related to the [redacted] during the initial Assessment were [redacted][2035] ● The Assessor's observations were directed [redacted] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted]

[2033] *Id*. at 24.

[2034] Ex. 31 (Feb. 18, 2022 resp. to Jan. 10, 2022 requests 10.iv and 10.v) at 18.

[2035] Ex. D (2023 Assessment Report) at 36.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	[redacted] described herein.[2036]
Paragraphs 1052–58 1052. Furthermore, the Assessor observed a [redacted][1149] 1053. The Assessor stated that, [redacted][1150] 1054. During the Assessment, the Assessor [redacted][1151] 1055. However, the Assessor [redacted][1152] 1056. The Assessor also noted that [redacted]	**Paragraphs 1052–58** purport to describe certain Assessor observations about [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII requirements because: ● Nothing in Part VII of the Order required Meta to [redacted] In creating the [redacted] Meta affirmatively chose to implement safeguards and processes beyond those specifically required by the Order. ● They do not include details regarding Meta's efforts to enhance [redacted][2037] As a result, the Assessor

[2036] *See* Ex. 4 (2021 Assessment Report) at 24–25.

[2037] Ex. 31 (Feb. 18, 2022 resp. to Jan. 10, 2022 requests 10.iv and 10.v) at 17.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1153] 1057. The Assessor [redacted][1154] 1058. [redacted][1155] ***	found that the issues that it had identified related to the [redacted] during the initial Assessment were [redacted][2038] This remediation is not required under the Order. ● The Assessor's observations were directed at a perceived weakness in [redacted] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] described herein.[2039]
Paragraphs 1059-66 1059. According to the Assessor, [redacted][1156]	**Paragraphs 1059-66** purport to describe certain Assessor observations about the [redacted] as reflected in the initial Assessment Report. These paragraphs are inaccurate and, in any case, do not support a finding that Meta did not meet Part VII requirements because: ● Meta's development [redacted]

[1149] Ex. 4 at 25.
[1150] Ex. 4 at 25.
[1151] Ex. 4 at 25.
[1152] Ex. 4 at 25.
[1153] Ex. 4 at 25.
[1154] Ex. 4 at 25.
[1155] Ex. 4 at 25.

[2038] Ex. D (2023 Assessment Report) at 36.

[2039] *See* Ex. 4 (2021 Assessment Report) at 24–25.

Preliminary Findings of Fact (PFOF)	Response to PFOF
1060. According to the Assessor, [redacted][1157]	[redacted] was not required by the Order, and no provision of the Order sets forth guidelines on [redacted] Despite the absence of any Order requirement, [redacted][2040]
1061. Therefore, the Assessor [redacted][1158]	• They do not include that, at the time of the initial Assessment, [redacted][2041]
1062. However, the Assessor [redacted][1159]	• They do not include details regarding [redacted] While not required by the Order, the 2023 Assessment Report recognized that Meta remediated this observation.[2042] [redacted]
1063. The Assessor noted that [redacted][1160]	
1064. The Assessor recommended [redacted]	

[2040] *Id.* at 22.

[2041] *Id.* at 25.

[2042] Ex. D (2023 Assessment Report) at 35–36.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1161] 1065. [redacted][1162] 1066. [redacted][1163] *** [1156] Ex. 4 at 25. [1157] Ex. 4 at 25. [1158] Ex. 4 at 25. [1159] Ex. 4 at 25. [1160] Ex. 4 at 25. [1161] Ex. 4 at 25. [1162] Ex. 4 at 25. [1163] Ex. 4 at 25.	[redacted][2043] ● They fail to clarify that neither the Commission nor the Assessor has identified any harm to or impact on users in connection with the Assessor's observations regarding [redacted] described herein.[2044]

V. THE COMMISSION'S PRELIMINARY FINDINGS OF FACT ARE INACCURATE AND DO NOT SUPPORT A FINDING THAT META VIOLATED ANY ORDER, STATUTE, OR REGULATION AS A RESULT OF THE EXPIRATION CHECK CODING OVERSIGHT

Preliminary Findings of Fact (PFOF)	Response to PFOF
A. Expired Apps (¶¶ 1067–136)	
Paragraphs 1067–68 1067. Part I of the 2012 Order states, in relevant part, that "[Facebook] and its representatives, in connection with any	**Paragraphs 1067–68** purport to describe obligations imposed on Meta pursuant to Part I of the 2012 and 2020 Orders.

[2043] *Id.* at 8.

[2044] *See* Ex. 4 (2021 Assessment Report) at 25.

Preliminary Findings of Fact (PFOF)	Response to PFOF
product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication, the extent to which it maintains the privacy or security of covered information, including but not limited to: . . . C. the extent to which [Facebook] makes or has made covered information accessible to third parties."[1164] 1068. Part I of the 2020 Order states, in relevant part, that Facebook, "in connection with any product or service, shall not misrepresent in any manner, expressly or by implication, the extent to which [Facebook] maintains the privacy or security of Covered Information, including, but not limited to . . . C. The extent to which [Facebook] makes or has made Covered Information accessible to third parties."[1165] *** [1164] Ex. 1 (2012 Commission Order), Part I. [1165] Ex. 3, Part I.	These paragraphs quote the text of the Orders, but omit important context, in particular: • In the 2020 Order, the parties agreed to "resolve any and all claims that Defendant, its officers, and directors, prior to June 12, 2019, violated the FTC's Decision and Order in In re Facebook, Inc., C-4365, 2012 FTC LEXIS 135 (F.T.C. July 27, 2012)."[2045] Therefore, Meta has already been released from any purported violations of the 2012 order that occurred prior to June 12, 2019. • The 2020 Order also "resolve[d] all consumer-protection claims known by the FTC prior to June 12, 2019, that Defendant, its officers, and directors violated Section 5 of the FTC Act."[2046]
Paragraphs 1069–73 1069. In a March 21, 2018, Newsroom post, Mark Zuckerberg stated: "We have a responsibility to everyone who uses Facebook to make sure their privacy is protected. That's why we're making changes to prevent abuse. We're going to set a higher standard for how developers build on Facebook, what people should expect from them, and, most importantly, from us."[1166]	**Paragraphs 1069–73** purport to describe statements by Mark Zuckerberg and Mike Schroepfer regarding the launch of the 90-Day Limitation and its functionality. These paragraphs are incomplete, and therefore inaccurate, because: • They omit that the tools Meta announced in March 2018 were supplemental to changes that Meta made to the Facebook developer platform years earlier to prevent abusive collection of data.[2047] These

[2045] *United States v. Facebook, Inc.,* No. 19-cv-2184, Dkt. No. 2 at 1 (July 24, 2019).

[2046] *Id.*

[2047] *Introducing Anonymous Login and an Updated Facebook Login*, Meta, https://about.fb.com/news/2014/04/f8-introducing-anonymous-login-and-an-updated-facebook-login/ (Apr. 30, 2014 .

Preliminary Findings of Fact (PFOF)	Response to PFOF
1070. In a March 21, 2018, post, Zuckerberg also announced, "We will: . . . Turn off access for unused apps. If someone hasn't used an app within the last three months, we will turn off the app's access to their information."[1167] 1071. Two weeks later, on April 4, 2018, Facebook's then-Chief Technology Officer, Mike Schroepfer, provided "An Update on Our Plans to Restrict Data Access on Facebook" on Facebook's Newsroom blog, in which he highlighted the "nine most important changes" the Company was making "to better protect your Facebook information."[1168] 1072. As part of the April 4, 2018, announcement on Facebook Newsroom, Schroepfer stated, "In the next week, we will remove a developer's ability to request data people shared with them if it appears they have not used the app in the last 3 months."[1169] 1073. In a public Facebook Newsroom post dated April 4, 2018, Schroepfer stated that "starting on Monday, April 9, we'll show people a link at the top of their News Feed so they can see what apps they use—and the information they have shared with those apps."[1170] [1166] Ex. 66 (Mar. 21, 2018 Newsroom Post). [1167] Ex. 66. [1168] Ex. 65 (Facebook Newsroom Posts, Ex. 4 of Respondent's July 14, 2020 response to FTC demand) at FB-FTC-EXPAPPS-000000017 ("Two weeks ago we promised to take a hard look at the information apps can use when you	measures included the 2014 implementation of granular control over what permissions a user granted to an app; the requirement starting in 2014 that developers get approval from Facebook before requesting data beyond a user's public profile, friends list, and/or email address, and reductions in the number of APIs available to third parties.[2048] These changes directly addressed the conditions that enabled a Cambridge University researcher to obtain data about users' friends and share that information with Cambridge Analytica.[2049] In this context, the 90-Day Limitation is only one of several supplementary controls launched in 2018 to support the primary controls implemented in 2014.

[2048] *Id.*; *See also The New Facebook Login and Graph API 2.0*, Meta, https://developers.facebook.com/blog/post/2014/04/30/the-new-facebook-login/ (Apr. 30, 2014).

[2049] Ex. 66 (Mar. 21, 2018 Newsroom Post).

Preliminary Findings of Fact (PFOF)	Response to PFOF
connect them to Facebook as well as other data practices. Today, we want to update you on the changes we're making to better protect your Facebook information. . . ."). [1169] Ex. 65 at FB-FTC-EXPAPPS-000000018. [1170] Ex. 65 at FB-FTC-EXPAPPS-000000018.	
Paragraphs 1074–77 1074. On April 18, 2018, Facebook launched a feature (the "90-Day Limitation") designed to prevent a third-party consumer application ("app") that a user had logged into using Facebook Login from continuing to access a user's Facebook data if the user had not used the app in the past 90 days.[1171] 1075. Facebook Login allows Facebook users to create accounts on third-party apps by authenticating with their Facebook account credentials.[1172] 1076. Specifically, Facebook represented these "Expired Apps" would be permitted to retain data they had obtained while the user was still active, but they would be unable to continue obtaining the user's nonpublic information.[1173] 1077. Apps can use Facebook Login to access Facebook users' data.[1174] [1171] Ex. 61 (July 14, 2020 resp. to FTC demand) at 3; Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow	**Paragraphs 1074–77** purport to describe how users and third-party apps utilized Facebook Login and how the 90-Day Limitation operated. These paragraphs are incomplete, and therefore inaccurate, because: • It suggests that an app's integration of Facebook Login alone allowed access to Facebook users' data. When an app sought to obtain specific information about a Facebook user, it did so through Facebook's Graph API–an interface through which third-party apps request data from Facebook's social graph.[2050] Moreover, during this time, Meta conditioned access to nonpublic user information via the Graph API on (1) user consent through granular consent flows, and (2) review and approval of an app's request to access nonpublic user information.[2051] • Paragraph 1074 misstates the date on which Meta launched the 90-Day Limitation. Meta began rolling out the change on April 11, 2018, and this process continued through late May 2018.[2052]

[2050] Martens Report ¶¶ 44–45; Ex. 35 (July 28, 2021 White Paper Submitted by Facebook at 5–6; *Overview - Graph API*, Meta for Developers, https://developers.facebook.com/docs/graph-api/overview (last visited Mar. 1, 2024).

[2051] Martens Report ¶¶ 44–45; Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 10.

[2052] Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr.) at 41:1–44:25, 68:10–71:9 (The engineering work, which was only one phase of the process, "began on March 30th of 2018 and concluded on May 28th of 2018."); Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 5; Ex. 61 (July 14, 2020 resp. to FTC demand) at 3; PFOF ¶¶ 1123, 1134 (containing part of Totherow's statements).

Preliminary Findings of Fact (PFOF)	Response to PFOF
Dep. Tr.) at 36:17–20 ("if there was no indication of usage of [a third-party] app [by a user] within a 90-day window, [Facebook] would automatically expire that app's ability to access [that user's] data"), 41:5–21 (stating that the 90-day expiration feature began on April 11, 2018 and deployed through May 24, 2018 in a gradual fashion reaching "100 percent of overall users on May 24th."); Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 2, 5. [1172] Ex. 34 at 18:9–18 (Facebook Login is "the front door to the platform" and "it is the primary means of communicating from those third-party apps and websites into Facebook and into the Graph API underneath."); Ex. 62, Meta for Developers, Facebook Login Overview, at 1, https://developers.facebook.com/docs/facebook-login/overview/ (last accessed Apr. 29, 2022). [1173] Ex. 35 at 5. [1174] Ex. 62 (Facebook Login Overview, https://developers.facebook.com/docs/facebook-login/overview/) at 1.	
Paragraphs 1078–92 1078. According to Facebook, as of July 7, 2020, when a user went to the Apps and Websites settings for their account after November 2019, Facebook represented on its desktop version: "These are apps and websites you've used Facebook to log into. They can receive information you chose to share with them. Expired and removed apps may still have access to information that was previously shared with them, but can't receive additional non-public information."[1175] 1079. In the corresponding mobile version of the Apps and Websites settings (in effect December 2019 through present as of July 14, 2020), when the user clicked on the Expired tab, it stated: "Expired and removed	**Paragraphs 1078–92** purport to describe disclosures regarding the 90-Day Limitation in Meta's settings, Help Center articles, and Data Policy, and Mr. Totherow's explanation of the meaning of the setting pages. These paragraphs are incomplete, and therefore inaccurate, because: • They imply, without support, that Meta's change to the "Learn More" Help Center article in March 2020 related to the Expired Apps SEV. As the FTC alleges at Paragraph 1093, Meta did not become aware of the coding oversight giving rise to the SEV until June 2020.[2053] • They imply that Meta misrepresented the means by which a Facebook user

[2053] *See* Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 9; Ex. 61 (July 14, 2020 resp. to FTC demand) at 4.

Preliminary Findings of Fact (PFOF)	Response to PFOF
apps may still have access to information that was previously shared with them, but can't receive additional non-public information."[1176] 1080. Furthermore, at the Rule 30(b)(6) deposition, Facebook's corporate designee, Eric Totherow, stated that "[t]he expectation set out in the text of the expired apps tab [of the Apps and Website modules] makes it very clear that the app ought not to have access to that user's data any longer, except for the data the app has already collected prior to the expiration."[1177] 1081. In both the desktop and mobile versions of the Apps and Websites settings, when users clicked on the "Learn more" hyperlink, they were directed to a Help Center article that stated, in relevant part: "If an app or website is: . . . Expired: You've logged into these apps and websites with Facebook, but it appears you haven't been active for more than 90 days. They may still have access to info you previously shared, but their ability to make additional requests for private info has expired."[1178] 1082. The language in the Help Center article took effect in April 2018 and remains in effect through today, as of July 14, 2020.[1179] 1083. In March 2020, Facebook added a sentence, so that the Help Center was revised to state, in relevant part, that "If an app or website is: . . . Expired: You've logged into these apps and websites with Facebook, but it appears you haven't been active for more than 90 days. In some cases, an app or website may be marked as	could access their Expired Apps. As the FTC alleges, the purpose of the "Privacy Checkup" was to "guide you through *some* settings so you can make the right choices for your account." (Paragraph 1086, emphasis added). The Privacy Checkup operated precisely as described, directing the user to some important privacy settings. Meta did not describe the Privacy Checkup as a walkthrough of *all* privacy settings on Facebook. Nor would a walkthrough of all privacy settings be at all practical for users given the extensive privacy settings Meta provides Facebook users. That the Privacy Checkup *did* show the user "the apps and websites from other companies you've used Facebook to log into and have recently used" only reinforces that Privacy Checkup operated as advertised.[2054] As described above, the 90-Day Limitation was a supplementary control to existing processes, including granular data permissions and the review of access to nonpublic user information, designed to directly address the risk that led to the misuse of data by Cambridge Analytica. • They imply that the absence of a list of Expired Apps from the Privacy Checkup during the first half of 2020 materially deceived users as to the functionality of the 90-Day Limitation. The FTC concedes at Paragraphs 1078–79 that Meta prominently disclosed the list of Expired Apps in

[2054] Ex. 64 (Facebook Privacy Checkup Screenshots) at FB-FTC-EXPAPPS-000000045, FB-FTC-EXPAPPS-000000060.

Preliminary Findings of Fact (PFOF)	Response to PFOF
expired by Facebook. They may still have access to info you previously shared, but their ability to make additional requests for private info has expired."[1180] 1084. In its Data Policy, Facebook told users, "We are in the process of restricting developers' data access even further to help prevent abuse. For example, we will remove developers' access to your Facebook and Instagram data if you haven't used their app in 3 months . . . ."[1181] 1085. During the period from April 19, 2018 to present as of July 14, 2020, Facebook's Data Policy stated: "Apps and websites you use may receive your list of Facebook friends if you choose to share it with them. But apps and websites you use will not be able to receive any other information about your Facebook Friends from you, or information about any of your Instagram followers (although your friends and followers may, of course, choose to share this information themselves)."[1182] 1086. Facebook offered the "Privacy Checkup" tool to its users as a way to "guide you through some settings so you can make the right choices for your account."[1183] 1087. If users availed themselves of Facebook's "Privacy Checkup" tool, apps in the users' "Expired Apps" category were not shown for the user to consider as part of their Privacy Checkup.[1184]	the Apps & Websites settings pages on the desktop and mobile versions of Facebook starting in April 2018 with the launch of the 90-Day Limitation.[2055] The prominent display of Expired Apps in the Apps & Websites page helped ensure that users were not misled as to this information. • They omit that at all relevant times, Meta disclosed in its terms of service that Meta cannot guarantee "error-free" products, or that products "will function without disruptions, delays, or imperfections."[2056] Facebook users, including any affected by the Coding Oversight agreed to the terms of service when joining Facebook and were therefore on notice of the possibility of coding oversights, notwithstanding representations that code, including the 90-Day Limitation, would operate in a particular way.

[2055] Ex. 54 (Facebook Apps and Websites Settings Screenshots) at FB-FTC-EXPAPPS-000000004, FB-FTC-EXPAPPS-000000008.

[2056] *Terms of Service*, Facebook, http://web.archive.org/web/20200616003514/https://www.facebook.com/legal/terms/ (July 31, 2019); *see also Terms of Service*, Facebook, https://www.facebook.com/legal/terms (July 26, 2022 .

Preliminary Findings of Fact (PFOF)	Response to PFOF
1088. When the user checked their data settings through Privacy Checkup, Facebook purported to "walk through the options to make sure your settings are right for you."[1185] 1089. The "Apps and Websites" module in Privacy Checkup showed the user "the apps and websites from other companies you've used Facebook to log into and have recently used."[1186] 1090. The "Apps and Websites" module in Privacy Checkup did not show the user's Expired Apps.[1187] 1091. Privacy Checkup on the mobile version of Facebook during the first half of 2020 likewise directed the user to check their data settings for apps and websites and showed "the apps and websites from other companies you've used Facebook to log into and have recently used."[1188] 1092. Privacy Checkup on the mobile version of Facebook during the first half of 2020 did not show the user's Expired Apps.[1189] [1175] Ex. 54 at FB-FTC-EXPAPPS-000000004. [1176] Ex. 54 at FB-FTC-EXPAPPS-000000008. [1177] Ex. 34 at 195:4–195:8. [1178] Ex. 55 (Help Center Screenshot, in Facebook, 2020-07-14 Response to Demand re Expired Apps at FB-FTC-EXPAPPS-000000009. (emphasis added). [1179] Ex. 55 at FB-FTC-EXPAPPS-000000009 (emphasis added). [1180] Ex. 55 at FB-FTC-EXPAPPS-000000009 (emphasis added). [1181] Ex. 56 (Facebook Data Policy, in Facebook 2020-07-14 Response to Demand re Expired Apps at FB-FTC-EXPAPPS-000000014. [1182] Ex. 56 at FB-FTC-EXPAPPS-000000013 (Data	

Preliminary Findings of Fact (PFOF)	Response to PFOF
Policy revised as of April 19, 2018) (emphasis added). [1183] Ex. 64 at FB-FTC-EXPAPPS-000000047 (Privacy Checkup landing screen on desktop version from January 2020 to June 2020), FB-FTC-EXPAPPS-000000048 (Privacy Checkup landing screen on desktop version from June 2020 to present). [1184] Ex. 64 at FB-FTC-EXPAPPS-000000047 (Privacy Checkup landing screen on desktop version from January 2020 to June 2020). [1185] Ex. 64 at FB-FTC-EXPAPPS-000000049 (Data Settings module in Privacy Checkup, desktop version from January-June 2020), FB-FTC-EXPAPPS-000000050 (Data Settings module in Privacy Checkup, desktop version from June 2020 to present as of July 14, 2020). [1186] Ex. 64 at FB-FTC-EXPAPPS-000000051 (Data Settings module for Apps and Websites for desktop version from January 2020 to present as of July 14, 2020 (emphasis added). [1187] Ex. 64 at FB-FTC-EXPAPPS-000000051 (Data Settings module for Apps and Websites for desktop version from January 2020 to present as of July 14, 2020 . [1188] Ex. 64 at FB-FTC-EXPAPPS-000000060 (Data Settings Flow on mobile version, from January 2020 to Present as of July 14, 2020) (emphasis added). [1189] Ex. 64 at FB-FTC-EXPAPPS-000000057-FB-FTC-EXPAPPS-000000058 (Privacy Checkup landing screen on mobile version from January 2020 to June 2020) (emphasis added), FB-FTC-EXPAPPS-000000060 (Data Settings Flow on mobile version, from January 2020 to Present as of July 14, 2020 .	
Paragraphs 1093–97 1093. A Facebook engineer discovered the coding oversight in the Expiration Check that allowed third-party apps to access inactive users' non-public information on June 16, 2020.[1190] 1094. At the Rule 30(b)(6) deposition, Facebook's corporate designee confirmed	**Paragraphs 1093–97** purport to describe Meta's detection and disclosure of the coding oversight in the 90-Day Limitation. These paragraphs underscore Meta's good-faith handling of the coding oversight. The discovery and internal reporting of the issue is a testament to the privacy-aware culture that Facebook has worked to develop

Preliminary Findings of Fact (PFOF)	Response to PFOF
that "as a result of the coding oversight, Facebook for some period of time was sending users' nonpublic information to third-party developers of apps that Facebook had categorized as being expired."[1191] 1095. On June 29, 2020, Facebook notified Commission staff that, due to a coding oversight, Facebook had in fact, in some instances, continued to share users' nonpublic information with Expired Apps.[1192] 1096. Facebook had been continuing to share certain users' non-public information with Expired Apps since it launched the feature in April 2018.[1193] 1097. In a Facebook Newsroom post dated July 1, 2020, Konstantinos Papamiltiadis (a Facebook Vice-President of Platform Partnerships) stated that "in 2018, we announced that we would automatically expire an app's ability to receive any updates to [nonpublic user] information if our systems didn't recognize a person as having used the app within the last 90 days. But recently, we discovered that in some instances apps continued to receive the data that people had previously authorized, even if it appeared they hadn't used the app in the last 90 days."[1194] [1190] Ex. 61 at 4; see also Ex. 34 at 153:3–154:2 (the	internally, in which engineers are trained to be proactive in identifying and remediating potential privacy issues in the course of their work.[2057] Indeed, within 3 days of discovering the coding oversight, Meta engineers corrected it; it was fixed by June 19, 2020.[2058] And Meta's voluntary disclosure of the issue to the FTC within two weeks of detection, and to the public days later (i.e., the July 1, 2020 Newsroom post), reflects Meta's commitment to transparency about its privacy practices.[2059] These paragraphs are incomplete, and therefore inaccurate, because: • They omit the extensive, good-faith cooperation with the FTC on this matter following the June 29, 2020 notification. Meta received a multi-faceted request from the FTC on June 30, 2020 regarding the 90-Day Limitation, a mere day after notifying the FTC. And Meta promptly responded to this request with an initial 100+ page response on July 14.[2060] Meta continued to engage with the FTC over the ensuing months, by submitting substantial custodial documents between July and December 2020, engaging the FTC on revisions to the Data Policy and Help Center article, and making a corporate representative available for a 30(b)(6) deposition on September 30, 2021.[2061]

[2057] Martens Report ¶¶ 136, 140, 146.

[2058] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 9; Ex. 61 (July 14, 2020 resp. to FTC demand) at 4, 10.

[2059] PFOF ¶ 1097; Ex. 35 (July 28, 2021 White Paper Submitted by Facebook at 9.

[2060] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook at 10.

[2061] *Id.*; Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr. .

Preliminary Findings of Fact (PFOF)	Response to PFOF
corporate designee for the Rule 30(b)(6) deposition stated that "one of the engineers who works on the Facebook Login team noticed that there was a potential issue with a particular piece of code that in his mind didn't appear to conform with the 90-day expiration commitment" and "he observed . . . that it appeared to be possible for user data for an app friend, in other words, we're going to go to our software friends on Facebook again, it would be able to use my authentication token for my app to get data about you using a similar app, and that particular data request path was not subject to the 90-day expiration."), 154:15–17 ("Coding oversight . . . was internally discovered on June 16, 2020." . [1191] Ex. 34 at 155:14–20. [1192] Ex. 35 at 9; Ex. 34 at 79:7–16, 153:3–155:20 (stating that, in June 2020, Facebook accidentally uncovered the coding oversight that allowed third-party developers to receive nonpublic data that Facebook had categorized as expired). [1193] Ex. 35 at 7–8; see also Ex. 34 at 79:7–16, 153:3–155:20 (stating that, in June 2020, Facebook accidentally uncovered the coding oversight that allowed third-party developers to receive nonpublic data that Facebook had categorized as expired). [1194] Ex. 65 at FB-FTC-EXPAPPS-000000040.	
Paragraphs 1098–1110 1098. Facebook had implemented the 90-Day Limitation by creating a check in the software code (the "Expiration Check") that ran when an app used a user's access token to request data through the Graph API.[1195] 1099. The Graph API is "the interface through which third-party apps request data from Facebook's social graph."[1196] 1100. In most cases, an app relies on a user's own access token to access data shared with the app by that user.[1197] 1101. A user's access token is the mechanisms that an app uses to make a	**Paragraphs 1098–110** purport to describe the functionality of the 90-Day Limitation, including the Expiration Check. These paragraphs are incomplete, and therefore inaccurate, because: • Their description of the Expiration Check is incomplete. When Meta implemented the 90-Day Limitation starting in April 2018, it coded the Expiration Check so that a user was deemed inactive *by default* after 90 days unless the user had logged into the app in the last 90 days, regardless of whether the user had used the

Preliminary Findings of Fact (PFOF)	Response to PFOF
request on a user's behalf to look up data on another user.[1198] 1102. Expiration Check was programmed to evaluate whether the user associated with that token had used the app within the previous 90 days based on certain activity signals.[1199] 1103. If the user was deemed to have been inactive over this 90-day period, the Expiration Check was programmed to return an expired status for the token, preventing an app from using the token to access user data.[1200] 1104. For example, if one Facebook user "User B") did not use an app for 90 days, that app correctly would be blocked from using User B's token to request information regarding User B.[1201] 1105. In some instances, an app may use one user's access token to access the data of another user.[1202] 1106. If User B's friend ("User A") still actively used the app, then the app developer would be able to use User A's token to request, and obtain, data for User B that User B had previously authorized the app to access, and that User B had granted permission for User A to view.[1203] 1107. For example, an app may have a feature that allows User A to invite a Facebook friend who is the same age and who also uses the app ("User C") to join a	app.[2062] In the summer of 2018, after continued opportunity to develop and test the Expiration Check, Meta revised the Check: users were deemed inactive by default *unless* Meta could detect certain strongly trusted signals of user activity, i.e., signals providing a high degree of confidence that genuine user activity had occurred within the prior 90 days (a change from the previous blanket rule that users were inactive if they had not logged into the app in the past 90 days).[2063] In both of these implementations, Meta anticipated overinclusive expirations; users would sometimes be deemed inactive as a result of the Expiration Check despite having used the app within the prior 90 days.[2064] Meta accepted this risk in order to err on the side of effectively enforcing a strong 90-Day Limitation. The statement that "in some instances, an app may use one user's access token to access the data of another user" (Paragraph 1105) is incomplete and therefore misleading in three respects. ● First, use of a user's access token to access the data of another user is less frequent than the FTC suggests. These friend-token scenarios were very rare and this contributed to Meta's coding oversight and delayed detection despite good-faith development efforts.[2065] ● These paragraphs do not make clear that while the coding error did result in

[2062] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook at 6.

[2063] *Id.*

[2064] *Id.*

[2065] *Id.* at 7.

Preliminary Findings of Fact (PFOF)	Response to PFOF
game or other joint activity in the app. To determine if User C is the same age as User A, the app would use User A's token to request User C's birthday, and the code would return data about User C's birthday provided that User C had granted User A permission to view the information).[1204] 1108. Facebook engineers wrote Expiration Check into the software, but failed to execute similar code in all areas where it would be necessary to prevent expired apps from receiving nonpublic user information.[1205] 1109. The Facebook engineers did not test to ensure that the Expiration Check applied to the user's friends and failed to uncover this coding oversight because "the [coding] oversight . . .was not something that the engineers would have known to test for."[1206] 1110. Where an app requested User B's data through User A's token, the Expiration Check did not additionally check the expiration status of User B because the Expiration Check was designed to check the expiration status of the user whose token was used in the app's request for data (i.e., the token for User A)—and not User B's expiration status. As a result, User B's data was returned to the app, even if User B was classified as an inactive user in Facebook's systems.[1207] [1195] Ex. 61 at 3; *see also* Ex. 35 at 6; Ex. 34 at 202:6–203:15 (describing the Expiration Check). [1196] Ex. 35 at 6. [1197] Ex. 61 at 3.	apps being able to use User A's access token to access User B's friend list, they could not use User A's access token to access other information about User B's friends.[2066] • These paragraphs do not explain the compensating controls, including user consent, implicated by this scenario. The request would still have to have been made on an active user's behalf. The user whose information was requested would have expressly consented to sharing those types of data with the app. And through their privacy settings on Facebook, that user would have chosen to make the data available to the user on whose behalf it was being requested.[2067] • These paragraphs imply that Meta's engineers failed to follow secure coding practices with respect to the launch of the 90-Day Limitation because the engineers did not detect the coding oversight. Meta followed secure coding practices including multiple peer engineer reviews, automated testing of code for security vulnerabilities, and maintaining a bug bounty program. Despite these efforts, coding oversights can and do happen.[2068]

[2066] Martens Report ¶ 45.

[2067] *Id.* ¶¶ 87–88; Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 7–8.

[2068] *See* Martens Report ¶¶ 42–45.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[1198] Ex. 35 at 7; *see also* Ex. 34 at 42:8–10 ("A user authentication token is a thing that happens after a user allows an app to have access to its Facebook data."). [1199] Ex. 61 at 3; *see also* Ex. 34 at 212:10–212:25 (explaining the role of a token using the example of [redacted]). [1200] Ex. 61 at 3; *see also* Ex. 35 at 6. [1201] Ex[.] 61 at 3; *see also* Ex. 35 at 7–8. [1202] Ex. 61 at 3. [1203] Ex. 35 at 7; *see also* Ex. 61 at 3; Ex. 34 at 158:8–160:3 (detailing the circumstances in which a third-party developer could obtain User B's nonpublic information through User A without the Expiration Check protecting User B's information). [1204] Ex. 35 at 7–8. [1205] Ex. 35 at 7–8; *see also* Ex. 61 at 4–5. [1206] Ex. 34 at 79:17–80:10; *see also* Ex. 61 at 4–5. [1207] Ex. 35 at 7–8; Ex. 34 at 156:8–157:10.	
Paragraphs 1111–20 1111. The coding oversight resulted in third-party apps accessing the nonpublic information of 17.4 million affected users ("Affected Users").[1208] 1112. 1.6 million Affected Users out of approximately 17.4 million had non-static data fields queried.[1209] 1113. Static data fields are fields of data that a user is unlikely to change over time (such as their birthday or hometown).[1210] 1114. Non-static data fields are fields of data that are likely to change over time such as quotes, likes, photos, feed, friends, photo albums, and videos.)[1211] 1115. Facebook allowed apps to access nonpublic photos from 95,587 Affected Users.[1212]	**Paragraphs 1111–20** This section purports to describe the impact of the coding oversight. These paragraphs are incomplete, and therefore inaccurate, because: • They do not state that the Expiration Check was overinclusive, meaning users would sometimes be deemed inactive as a result of the Expiration Check despite having used the app within the prior 90 days.[2069] • They do not (and cannot) allege that the coding oversight caused any harm to users. The coding oversight merely resulted in some apps accessing user information the apps already had permission to access about users who had been inactive for more than 90 days.[2070]

[2069] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook at 6.

[2070] Martens Report ¶ 126; Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 10–11.

Preliminary Findings of Fact (PFOF)	Response to PFOF
1116. Facebook allowed apps to access nonpublic feeds from 81,865 Affected Users.[1213] 1117. Facebook allowed apps to access nonpublic friends lists from 49,106 Affected Users.[1214] 1118. Facebook allowed apps to access nonpublic photo albums from 39,520 Affected Users.[1215] 1119. Facebook allowed apps to access nonpublic videos from 7,574 Affected Users.[1216] 1120. Approximately 1,300 apps received nonpublic information from Affected Users from June 12, 2019 through July 14, 2020.[1217] [1208] Ex. 35 at 11. [1209] Ex. 35 at 11. [1210] Ex. 35 at 11. [1211] Ex. 35 at 11, 13. [1212] Ex. 35 at 13. [1213] Ex. 35 at 13. [1214] Ex. 35 at 13. [1215] Ex. 35 at 13. [1216] Ex. 35 at 13. [1217] Ex. 61 at 9–10; Ex. 63 (list of apps that received nonpublic information from Affected Users).	• They do not state that within the 1.6 million Affected Users who had non-static data fields queried, the number of non-static fields that were queried per user was very small: the average user among these 1.6 million users had only 1.14 non-static fields queried.[2071] Even then, all of that data was still subject to the permissions checks that ensured the users had, in fact, previously authorized the app to access the data field(s) in question.[2072] The non-static field queried most frequently as a result of the Coding Oversight was, by far, the "quotes" field, which, if populated, contains a user's favorite quotation(s) from books, movies, and so forth.[2073] Nearly all of the queries of this field were run by a single app, [redacted] which likely accesses user quotes in order to identify favorite media of users and friends for purposes of making recommendations.[2074] • They do not state that the rule is prophylactic and non-compliance with it is not indicative of the substantive harm the rule helps prevent–namely the intentional misuse of an app to collect data about a user unrelated to the app's functionality. The absence of harm is supported by the fact here that users had previously granted permission to the apps to access the types of data in question, and the users' privacy settings allowed the data to be

[2071] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook at 11.

[2072] Martens Report ¶ 126; Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 10–11.

[2073] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook at 12.

[2074] *Id.* at 12, n.14.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	viewed by the users for whom it was requested.[2075] • They do not acknowledge that there is no evidence that any developer abuse occurred here. The logs do not reflect any pattern indicative of intentional abuse.[2076] Instead, they reflect apps making miscellaneous requests that incidentally affected inactive users from time to time. The percentage of users who were affected by these requests is very small, and the range and sensitivity of the information that was affected was very limited. Specifically, in the nearly six months before the coding oversight was fixed on June 18, 2020, such queries constituted approximately 1.5% of API queries overall; and in the two months after the fix, such queries still constituted approximately 1.5% of API queries overall.[2077] In other words, app behavior in this context stayed the same before and after the coding oversight was fixed, indicating that any collection of data relating to expired users prior to the fix was purely incidental. • They do not (and cannot) allege that the coding oversight was material to Facebook users. There would be no salient reason for a user to be concerned about the potential for developer abuse if they knew that an app could access their data beyond 90 days in these limited circumstances. As discussed above, the request would

[2075] Martens Report ¶ 126; Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 10–11.

[2076] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook at 12.

[2077] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
	still have to have been made on an active user's behalf.[2078] The user whose information was requested would have expressly consented to sharing those types of data with the app. And through their privacy settings on Facebook, that user would have chosen to make the data available to the user on whose behalf it was being requested.[2079]
Paragraphs 1121–36 1121. Facebook acknowledged that its "worked around the clock" to implement the 90-Day Limitation and the Expiration Check.[1218] 1122. In an April 12, 2018, post to WorkPlace, [redacted] a Facebook software engineer on the Facebook Login product) stated that Facebook had "made an ambitious 2 years worth of changes to this [90-day expiration check] product in about 3 weeks."[1219] 1123. In a Rule 30(b)(6) deposition, Facebook's corporate designee, stated that "the engineering work began on March 30th of 2018 and concluded on May 28th of 2018."[1220] He also stated that "there was no fixed timeline, but [the product team] did want to move aggressively"[1221] 1124. In a document called a "team grade," which "summarizes all of the things that were done over the course of the prior six months,"[1222] drafted by [redacted][1223] and attached to an email dated June 29, 2018 from [redacted] to [redacted] both	**Paragraphs 1121–36** purport to describe Meta's development of the 90-Day Limitation and the Expiration Check. These paragraphs are incomplete, and therefore inaccurate, because: • They suggest that (1) a lack of resources or (2) the prompt development and launch of the 90-Day Limitation caused the coding oversight. In fact, these allegations simply underscore Meta's good-faith effort to add supplemental privacy safeguards to its existing core safeguards designed to prevent app developer abuse. Meta invests heavily in the development and maintenance of its Privacy Program but such investments are not unlimited. Teams at Meta sometimes organize themselves to deliver on product development objectives with the resources at their disposal [redacted] As Meta's corporate designee explained, [redacted] had no bearing on the delivery of the 90-Day

[2078] *Id.* at 10.

[2079] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
employees of Facebook on the Identity team in the first half of 2018[1224]— [redacted] indicated that the team working on the 90-day expiration check "needed to put up a plan and execute in very tight deadline before F8 to fulfill [Zuckerberg]'s commitment."[1225] 1125. In the "team grade" document drafted by [redacted] and attached to an email dated June 29, 2018, from [redacted] to [redacted] stated that the 90-day expiration feature "team was mostly in a critical and reactive mode throughout the half [of 2018] due to many factors e.g.[,] [redacted] etc. Even though we were able to handle a few hard SEVs with the capacity we had, [redacted][1227] 1126. At the Rule 30(b)(6) deposition, Facebook's corporate designee stated that he thought Mr. [redacted] was fair in characterizing the 90-day expiration feature team as being "mostly in a critical and reactive mode throughout the half [of 2018]."[1228] 1127. At the Rule 30(b)(6) deposition, Facebook's corporate designee stated that [redacted]	Limitation. The development team had a "strong desire . . . to move swiftly and effectively." The "critical and reactive mode" of the engineers on the team reflected Meta's prioritization of the project.[2080] This posture enabled the team to launch the 90-Day Limitation starting in April 2018 on a rolling basis while adhering to secure coding practices. Moreover, as the allegations illustrate, Meta did not simply stop work on the 90-Day Limitation after launch: it continued to review the team's effectiveness as evidenced by the "team grade" documents in the summer of 2018 and the further updates to the 90-Day Limitation code.[2081] These included the updates to the activity signals in the Summer of 2018 and code refactoring in June 2020 that led to the detection of the coding oversight.[2082] Meta's corporate designee also repeatedly explained to the FTC in his deposition that this description, and the description that changes were made in "~4 days over a weekend" were an "inaccurate assessment of the amount of time the engineering team spent working on this."[2083] Similarly, Meta's corporate designee's explanation that a project of this magnitude would normally include a [redacted] rollout period does not

[2080] Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr.) at 122:3–125:5.

[2081] *Id.* at 113:22–129:20.

[2082] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook) at 9.

[2083] Ex. 34 (Sept. 30, 2021 R. 30(b)(6) Eric Totherow Dep. Tr.) at 131:2–16.

Preliminary Findings of Fact (PFOF)	Response to PFOF
[redacted][1230] 1128. At the Rule 30(b)(6) deposition, Facebook's corporate designee stated that "there was a strong desire within the team to move swiftly and effectively" on the 90 day expiration feature,[1231] and "[t]here definitely was a desire to have [the 90-day token expiration] and other platform changes done prior to F8."[1232] 1129. In a WorkChat dated July 20, 2018, between [redacted] and [redacted], [redacted] stated that "[Facebook] prioritized getting the [Login] changes out ahead of [Zuckerberg's] Congressional testimony, so these changes were made in ~4 days over a weekend."[1233] 1130. In a July 14, 2018, email from [redacted], a Facebook employee, to [redacted] stated that "in the wake of [Cambridge Analytica], we rushed to make changes to the platform, many of which didn't take into account how it would affect the apps, esp games, even if they seemed like good ideas."[1234] 1131. In a public Facebook Newsroom post dated April 4, 2018, Schroepfer (Facebook's then-Chief Technology Officer) stated that "starting on Monday, April 9, we'll show people a link at the top of their News Feed so they can see what apps they use—and the information they have shared with those apps."[1235]	mean that a [redacted] rollout was *necessary* to successfully execute the 90-Day Limitation.[2084] Nor is it material that Meta did not apply the [redacted] rollout here. Meta operated the 90-Day Limitation for more than two years before anyone detected the coding oversight (April 2018 to June 2020). There is no factual basis to allege that Meta would have detected this code oversight even if it had employed a [redacted] rollout cycle. • Paragraph 1130 suggests that the impact of the 90-Day Limitation on certain apps, e.g., games, materially impacted consumer privacy. On the contrary, as discussed above, the 90-Day Limitation applied inactive status by default for users, which Meta knew could result in some users losing access to apps, e.g., games, that they were using but where they had not logged into the app within the last 90 days.[2085] Meta accepted this risk of user and app developer inconvenience in favor of greater privacy protection. Moreover, Meta continued to refine the inactivity signals after launch to reduce the risk of unintentionally inactivating users' apps.[2086] Taken together, these paragraphs provide no factual allegation that Meta acted in bad faith or irresponsibly in the development of the 90-Day Limitation. As discussed above, Meta followed sound secure coding practices, which enabled it to promptly

[2084] *Id.* at 70:4–71:9.

[2085] Ex. 35 (July 28, 2021 White Paper Submitted by Facebook at 6.

[2086] *Id.*

Preliminary Findings of Fact (PFOF)	Response to PFOF
1132. At the Rule 30(b)(6) deposition, Facebook's corporate designee stated that Schroepfer suggested a time frame of the week after April 4, 2018 for the completion the code for the 90-day limitation.[1236] 1133. At the Rule 30(b)(6) deposition, Facebook's corporate designee stated that, as of March 21, 2018, "the implementation details of exactly how to execute the 90-day expiration hadn't actually been ironed out."[1237] 1134. At the Rule 30(b)(6) deposition, Facebook's corporate designee stated that "engineering work [for the 90-day limitation feature] began on March 30th of 2018 and concluded on May 28 of 2018."[1238] 1135. At the Rule 30(b)(6) deposition, Facebook's corporate designee stated, regarding the 90-day limitation feature, that "we do deliberately move very deliberately, some might even say slowly, when we rollout changes to the [Facebook] platform. And changes of this nature, if this magnitude, would normally have accompanied a much more gradual rollout period. The standard process when we make a dramatic change to how the API behaves is to [redacted][1239] 1136. At the Rule 30(b)(6) deposition, in response to whether the 90-day limitation feature was a "dramatic change," Facebook's corporate designee stated,	launch a privacy protective supplemental control that was overwhelmingly effective at further reducing apps' access to user data. The good faith application of secure coding practices does not guarantee against coding oversights.[2087] Meta reinforced its good faith by promptly disclosing the coding oversight, remediating, and cooperating with the FTC's inquiry into the matter.

[2087] Martens Report ¶¶ 63–65, 117–24.

Preliminary Findings of Fact (PFOF)	Response to PFOF
"Very[,] very much so. It is difficult to overstate how dramatic of a change this was to . . . our ecosystem in particular but also to users of apps."[1240] He further stated that "[a] change of this magnitude . . . is the single most impactful thing that has been done on the [Facebook] platform since its creation."[1241]	

[1218] Ex. 35 at 5.
[1219] Ex. 57 (Consumer Identity Platform + Experiences (Expired Apps 30b6 Dep. Ex. 6); see also Ex. 34 at 63:22–23 [redacted] is a software engineer on the Facebook Login product")[.]
[1220] Ex. 34 at 70:2–3.
[1221] Ex. 34 at 117:13–14.
[1222] Ex. 34 at 114:18–115:3.
[1223] Ex. 34 at 115:4–6 (stating that [redacted] prepared the team grade in 2018).
[1224] Ex. 34 at 114:14–17.
[1225] Ex. 58 (Chat Thread (Expired Apps 30b6 Dep. Ex. 12)) at FB-FTC-EXPAPPS-000010467; Ex. 34 at 113:16–114:17.
[1226] "SLA" is a service-level agreement. Ex. 34 at 127:23–25.
[1227] Ex. 58 at FB-FTC-EXPAPPS-000010467.
[1228] *See* Ex. 34 at 123:13–17 ("I do think that's a fairly fair characterization, yes.").
[1229] Ex. 34 at 124:4–5.
[1230] Ex. 34 at 124:6–13.
[1231] Ex. 34 at 122:5–9.
[1232] Ex. 34 at 122:14–18.
[1233] Ex. 59 (WorkChat dated July 20, 2018 between [redacted] and [redacted] Expired Apps 30b6 Dep. Ex. 13)) at FB-FTC-EXPAPPS-000010591.
[1234] Ex. 60 (Email from [redacted] to [redacted] (Expired Apps 30b6 Dep. Ex. 14)) at FB-FTC-EXPAPPS-000005540.
[1235] Ex. 65 at FB-FTC-EXPAPPS-000000018.
[1236] Ex. 34 at 118:13–119:6.
[1237] Ex. 34 at 48:8–10.
[1238] Ex. 34 at 70:1–3.
[1239] Ex. 34 at 70:19–71:6.
[1240] Ex. 34 at 71:12–15.
[1241] Ex. 34 at 71:21–24.

VI. THE COMMISSION'S PRELIMINARY FINDINGS OF FACT ARE INACCURATE AND DO NOT SUPPORT A FINDING THAT META VIOLATED ANY ORDER, STATUTE, OR REGULATION AS A RESULT OF THE MESSENGER KIDS TECHNICAL ERRORS

Preliminary Findings of Fact (PFOF)	Response to PFOF
A. Messenger Kids (¶¶ 1137–64)	
Paragraph 1137–39 1137. In December 2017, Facebook began offering Messenger Kids (MK), a free messaging and video calling application "specifically intended for users under the age of 13."[1242] 1138. The MK app allows children to communicate via text or video with parent-approved contacts.[1243] 1139. Facebook reported that most MK users as of October 2019 were under the age of 13. Specifically, Facebook reported that, of the more than 1.7 million MK users in October 2019, over 1.1 million of them had provided Facebook with a birth date, and over 1 million of those users (approximately 95%) had reported birth dates identifying the users as under the age of 13.[1244] [1242] Ex. 38 at 2, 19 (Nov. 15, 2019 resp. to CID interrogatory 2(a) and 5(a . [1243] Ex. 38 at 2. [1244] Ex. 38 at 9.	**Paragraphs 1137–39** purport to describe the Messenger Kids product and its key features. These paragraphs are incomplete, and therefore inaccurate, because: • They fail to describe the other features and parental controls offered in the Messenger Kids app, including parents' ability to monitor their child's activity on the app, receive notifications each time their child reports content or a contact, and see all images, links, and other media content sent or received by their child. • They fail to state that there has never been advertising or monetization on Messenger Kids, meaning that Meta neither serves advertisements to Messenger Kids users nor uses personal information about Messenger Kids users to inform advertisements.[2088]
Paragraphs 1140–49 1140. During the account registration process, Facebook collects certain information about the child from the parent,	**Paragraphs 1140–49** purport to describe Messenger Kids' data practices, including representations to parents regarding the fact that Messenger Kids users can only communicate with parent-approved contacts.

[2088] *See* Ex. 40 (Jan. 31, 2020 White Paper) at 3; Ex. 39 (FB-MK-FTC-00000014) at FB-MK-FTC-00000021.

Preliminary Findings of Fact (PFOF)	Response to PFOF
such as the child's name and, if the parent chooses to provide it, the child's date of birth.[1245] 1141. Facebook also collects information from parents as part of the account sign-up process, including location information, device identifiers, and other information about the devices on which the app is downloaded.[1246] 1142. As the child uses MK, Facebook combines certain of the information it collects from parents as part of the account sign-up process with additional information it collects from the child, including the child's profile picture, name or username, messages the child sent and received as well as photos, videos, and audio files sent and received by the child.[1247] 1143. Facebook discloses certain of this information from the child on various occasions, including by: (1) sharing the child's name and profile picture with contacts the parent invites and approves; (2) making the child's name and profile picture visible to others who have created Messenger Kids accounts for their children; (3) sharing the child's name and profile picture in messages sent by the child; and (4) facilitating the disclosure of information the child includes in messages, including photos, videos, and audio files sent in the messages.[1248] 1144. Facebook has represented, and continues to represent, that MK users can	These paragraphs are incomplete, and therefore inaccurate, because: • They fail to include other relevant disclosures to parents at the time parents provide consent for their children to use Messenger Kids. Specifically, the FTC fails to include the fact that Meta expressly states that it cannot guarantee perfect security. Messenger Kids Terms of Service tell parents: "[W]e do our best to keep Messenger Kids safe and have designed the Messenger Kids experience with safety front and center," but Messenger Kids "cannot guarantee" the efficacy of these efforts.[2089]

[2089] *See* Messenger Kids Terms of Service, https://www.facebook.com/legal/messengerkids/terms?version=2020 (last modified Dec. 20, 2023); *see also* Meta's Terms of Service, https://www.facebook.com/terms.php (last visited Mar. 14, 2024) (Meta cannot guarantee that its products "always will be safe, secure, or error-free, or that they will function without disruptions, delays, or imperfections").

Preliminary Findings of Fact (PFOF)	Response to PFOF
communicate in MK with only parent-approved contacts.[1249] 1145. For example, Facebook's websites have stated that, when using MK, "[k]ids can only connect with parent-approved contacts, which creates a more controlled environment"[1250] and that "[p]arents fully control the contact list and kids can't connect with contacts that their parent does not approve."[1251] 1146. Facebook has also made similar representations during the sign-up process for MK, specifically on a page in which Facebook requests parents' consent to collect, use, and disclose their children's information. This page informs parents "[y]ou can approve who your child can communicate with," and links to the MK terms of service and privacy policy.[1252] 1147. Additionally, from December 2017 to February 2020, MK's terms of service represented that "[k]ids can creatively express themselves as they communicate with parent-approved family and friends…in a secure environment" and that "[y]our child owns all of the content and information they post on Messenger Kids, and you can control who they may share it with through the Messenger Kids parental controls."[1253] 1148. From December 2017 to early February 2020, the linked privacy policy stated MK was "designed to allow parents and guardians to decide who may and may not interact with their child on Messenger Kids."[1254] 1149. Facebook requires parents to consent to MK's term of service and privacy policy, and it informs parents that it "won't collect,	

Preliminary Findings of Fact (PFOF)	Response to PFOF
use or disclose any info from your child without this consent."[1255] [1245] Ex. 38 at 8. [1246] Ex. 38 at 8. [1247] Ex. 38 at 9; www.messengerkids.com. [1248] Ex. 38 at 4, 7–8; www.messengerkids.com. [1249] Ex. 38 at 12; https://www.facebook.com/legal/messengerkids/terms; https://www.facebook.com/legal/messengerkids/privacypolicy2019; Ex. 38 at 12; Ex. 38 at 18–20; Ex. 40 at 5–6, 10–11 (Jan. 31, 2020 White Paper). [1250] Ex. 104 (FB-MK-FTC-00000062 . [1251] Ex. 39 (FB-MK-FTC-00000014) at FB-MK-FTC-00000019. [1252] Ex. 38 at 12. [1253] https://www.facebook.com/legal/messengerkids/terms. [1254] https://www.facebook.com/legal/messengerkids/privacypolicy2019. [1255] Ex. 38 at 12.	
Paragraphs 1150–54 1150. When MK users initiated a group text chat on Android devices by simultaneously selecting multiple contacts to participate in the chat, coding errors caused the application to fail to check whether the secondary contacts were approved to chat with each other.[1256] 1151. For example, if MK user A initiated a group text chat with B and C simultaneously, the application would check that B and C were approved contacts with A, but not whether B and C were approved contacts with each other.[1257] 1152. Facebook discovered the group text chat vulnerability when one of MK's	**Paragraph 1150–54** purport to describe the group chat technical error. These paragraphs are incomplete, and therefore inaccurate, because: • They fail to fully describe the nature of the group chat technical error. Messenger Kids was specifically designed so that Messenger Kids users could only communicate with parent approved contacts.[2090] The product was built with redundant controls, meaning engineers coded two separate overlapping controls–one user-facing control (the "people picker" check, which only allowed users to select users to participate in chats who were approved to communicate with one

[2090] *See* Ex. M (Oct. 14, 2021 Hady Abou El-Kheir Dep. Tr.) at 20:11–20, 108:5–23.

Preliminary Findings of Fact (PFOF)	Response to PFOF
employees noticed his child was communicating with an unapproved contact.[1258] 1153. Facebook remediated the vulnerability within twenty-four hours of discovery, and it notified the FTC of this vulnerability on July 15, 2019.[1259] 1154. This vulnerability allowed 5,658 MK users to communicate with unapproved contacts through text chat from June 2018 to July 2, 2019.[1260] [1256] Ex. 38 at 18–20; Ex. 40 (Jan. 31, 2020 White Paper) at 5-6, 10–11. [1257] Ex. 38 at 18–20; Ex. 40 at 5–6, 10–11. [1258] Ex. 38 at 20–21. [1259] Ex. 38 at 21; Ex. 40 at 1. [1260] Ex. 38 at 21–22.	another) and a server side check (which prevented users on the back end from creating a chat if any participant is not approved to communicate with any other intended participant).[2091] These controls were reviewed per Meta's best-practices code review process and through a Quality Assurance process intended to detect flaws, and determined to be accurate. The error was only able to happen because of the unforeseen combination of 1) a bug in the people picker code *together with* 2) an error made by an engineer who in June 2018 inadvertently removed the approved contacts check in the course of code cleanup.[2092] • They fail to describe the limited nature of any potential communication between participants of a chat that was created as a consequence of the group chat technical error. Communication was only possible with parent-approved contacts of any impacted user's parent-approved contact (i.e., friends of existing contacts), so there was no possibility for a stranger to create and exploit such a chat.[2093] • They fail to state what it means by the fact that the vulnerability "allowed 5,658 MK users to communicate with unapproved contacts." The Messenger Kids app is coded to only allow messages with approved contacts to appear in a user's inbox.[2094] This coding worked to fully keep any group chat

[2091] Ex. 38 (Nov. 15, 2019 resp. to CID) at 16–17.

[2092] Martens Report ¶¶ 95–104; Ex. 40 (Jan. 31, 2020 White Paper) at 46.

[2093] Ex. 38 (Nov. 15, 2019 resp. to CID) at 18–20; Ex. 40 (Jan. 31, 2020 White Paper) at 5–6.

[2094] Ex. 38 (Nov. 15, 2019 resp. to CID) at 20; Ex. 40 (Jan. 31, 2020 White Paper) at 5–6.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	impacted by the error out of a Messenger Kids user's inbox.[2095] The only way one of the impacted users could participate in the impacted group chat would be if they had "push" notifications enabled on their device, saw the chat notification, and pressed the notification to access the chat.[2096] If push notifications were not enabled, the user did not have any way to access the impacted chat. Similarly, even if enabled, once a push notification was cleared, there was no way for the user to access the chat.[2097] This means that the 5,658 impacted Messenger Kids users *could have* received such communications and not that they necessarily ever did receive such communications.[2098] • They fail to provide adequate context for the scope of the issue. At the time the technical errors were discovered, there were 1.7 million monthly users on Messenger Kids.[2099] Only approximately one half of one percent of those users communicated in some way with a friend of a connected user.[2100] • They fail to state that Meta notified the parents and guardians of all users impacted by the errors on July 15, 2019.[2101] Where available, the notification included details about the

[2095] Ex. 40 (Jan. 31, 2020 White Paper) at 5–6.

[2096] *Id.*

[2097] *Id.*

[2098] Ex. 40 (Jan. 31, 2020 White Paper) at 6; Ex. 38 (Nov. 15, 2019 resp. to CID) at 37.

[2099] PFOF ¶ 1139.

[2100] Ex. 40 (Jan. 31, 2020 White Paper) at 5.

[2101] Ex. 38 (Nov. 15, 2019 resp. to CID) at 23.

Preliminary Findings of Fact (PFOF)	Response to PFOF
	impacted communication, such as who the child communicated with.[2102]
Paragraphs 1155–64 1155. Additionally, 3,625 MK users participated in group video calls with an unapproved contact.[1261] 1156. The 3,625 users affected by the group video call vulnerability include users who were also affected by the group text vulnerability.[1262] 1157. These unauthorized contacts resulted from a different coding error related to the Messenger application's "escalation" feature.[1263] 1158. In November 2018, Facebook updated its Messenger app to allow Messenger users to "escalate" a video call, i.e., add participants to an ongoing video call.[1264] 1159. To block kids from using this escalation feature, Facebook implemented coding to block the escalation of video calls that included MK users.[1265] 1160. On November 12, 2018, however, a Messenger engineer inadvertently deleted part of the blocking code in iOS.[1266] 1161. This coding error allowed Messenger users to escalate video calls with MK users. Because the technical safeguards implemented to prevent MK users from communicating with unapproved contacts failed to work with the escalation feature,	**Paragraphs 1155–64** purport to describe the cause and impact of the video call technical error. These paragraphs are incomplete, and therefore inaccurate, because: • They fail to adequately describe the causes and impact of the video call technical error. Significantly, the FTC fails to describe the mitigating impact of Messenger Kids' overlapping controls. Although the code that prevented escalation from working with Messenger Kids users was inadvertently removed, which permitted Messenger Kids users to join ongoing calls with friends-of-friends, Messenger Kids' overlapping controls worked to prevent the ability for the unapproved contact and the Messenger Kids users to contact one another directly, whether through chat or video, by prohibiting the creation of an underlying chat thread between the Messenger Kids user and any unapproved contact.[2103] • They fail to note that the unapproved contact could never themselves initiate a call with the Messenger Kids user, nor could a Messenger Kids user initiate a call with an unapproved contact.[2104] • They fail to make clear that the video call technical error was only at issue from November 12, 2018, to January 30, 2019 (only on iOS devices), and from

[2102] *Id.*

[2103] *See* Martens Report ¶¶ 127, 141–42; Ex. 38 (Nov. 15, 2019 resp. to CID) at 25.

[2104] *See* Ex. 40 (Jan. 31, 2020 White Paper) at 8.

Preliminary Findings of Fact (PFOF)	Response to PFOF
MK users could communicate in group video calls with unapproved contacts.[1267] 1162. An MK engineer discovered the error in January 2019, fixed the code without realizing the error impacted the effectiveness of the MK technical safeguards, and confirmed the error did not impact Android devices.[1268] 1163. In May 2019, a Messenger engineer made a second coding error affecting the code used to block escalation of video calls that included MK users. This error again allowed certain Messenger users to escalate video calls to include MK users, but this time on Android devices.[1269] 1164. Facebook discovered the error while investigating the group text chat vulnerability, and fixed it shortly after discovery, on or about July 2, 2019.[1270] Facebook notified the FTC of this vulnerability on July 15, 2019.[1271] [1261] Ex. 38 at 26; Ex. 40 at 6–8, 11–12. [1262] Ex. 38 at 26; Ex. 40 at 6–8, 11–12. [1263] Ex. 38 at 26; Ex. 40 at 6–8, 11–12. [1264] Ex. 38 at 23–24. [1265] Ex. 40 at 6. [1266] Ex. 40 at 6. [1267] Ex. 38 at 23–25; Ex. 40 at 6–8, 11–12. [1268] Ex. 40 at 6–7. [1269] Ex. 38 at 23–25; Ex. 40 at 6–8, 11–12. [1270] Ex. 38 at 25. [1271] Ex. 40 at 1.	May 27, 2019, to July 2, 2019 (on Android devices).[2105] • They fail to state that Meta notified the parents and guardians of all users impacted by the errors on October 8, 2019. Where available, the notification included details about the impacted communication, such as who the child communicated with.[2106] • They fail to state that Messenger Kids users were only able to communicate with friends of a parent-approved contact via this error.[2107] Messenger Kids has not identified any complaints or reports about this error, even after it notified parents of the error, nor were any bug bounty reports ever submitted about it through Meta's bug bounty program.

[2105] *Id.*

[2106] *See* Ex. 38 (Nov. 15, 2019 resp. to CID) at 28.

[2107] *See* Martens Report ¶ 74; Ex. 40 (Jan. 31, 2020 White Paper) at 5.

Dated: April 1, 2024

DAVIS POLK & WARDWELL LLP

/s/ James P. Rouhandeh

James P. Rouhandeh
Michael Scheinkman
James W. Haldin
450 Lexington Avenue
New York, NY 10017
Tel: (212) 450-4000
rouhandeh@davispolk.com
michael.scheinkman@davispolk.com
james.haldin@davispolk.com

Counsel for Respondent Meta Platforms, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2024, I caused a true and correct copy of the foregoing Response to the Commission's Preliminary Findings of Fact, as well as accompanying documents, including:

1) the declaration of Michel Protti, Chief Privacy Officer, Product and the Designated Compliance Officer at Meta;

2) the expert reports of:

    a. Larry D. Thompson, Counsel, Finch McCranie LLP;

    b. Eugene F. Soltes, McLean Family Professor of Business Administration at Harvard Business School; and

    c. David Martens, Principal, Intuity Consultants, Inc.; and

3) a number of exhibits, including:

    a. the transmittal letter that accompanied Meta's submission of the Initial Assessment Report Exhibit A);

    b. a presentation entitled "2023 Assessment Status & Report Update" that the Assessor provided to Commission staff on May 3, 2023 (Exhibit B);

    c. the transmittal letter that accompanied Meta's submission of the 2023 Assessment Report Exhibit C);

    d. the 2023 Assessment Report Exhibit D);

    e. the Commission's two CIDs issued in the Messenger Kids matter (Exhibits E and F);

    f. various correspondence between Meta and the Commission (Exhibits G through L); and

    g. the transcript of the investigational hearing for Hady Abou El-Kheir (Exhibit M);

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.

One electronic courtesy copy to the Office of the Administrative Law Judge via email to OALJ@ftc.gov.

One electronic copy via email to Complaint Counsel:

Reenah L. Kim (rkim1@ftc.gov)
Federal Trade Commission
600 Pennsylvania Ave., NW, CC-6316
Washington, DC 20580

Hong Park (hpark@ftc.gov)
Federal Trade Commission
600 Pennsylvania Ave., NW, CC-6316
Washington, DC 20580

/s/ James P. Rouhandeh
James P. Rouhandeh

Counsel for Respondent Meta Platforms, Inc.

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

DECLARATION OF MICHEL PROTTI

I, Michel Protti, hereby declare and state as follows:

1. I am the Chief Privacy Officer, Product ("CPO") and the Designated Compliance Officer ("DCO") at Meta Platforms, Inc., formerly known as Facebook, Inc. ("Meta"). I offer this declaration regarding Meta's Privacy Program and compliance with the Stipulated Order in support of Meta's Response to the Order to Show Cause Why the Commission Should Not Modify the Order and Enter the Proposed New Order.

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.

Roles and Responsibilities

3. I was appointed as Meta's CPO in July 2019. I was formally designated as Meta's Designated Compliance Officer ("DCO") pursuant to Part VII.C of Attachment A to the Stipulated Order, and approved as such by Meta's independent Privacy Committee of the Board of Directors, in May 2020.

4. As CPO and DCO, I coordinate and am responsible for Meta's comprehensive Privacy Program and the implementation of Meta's privacy efforts across its product and engineering teams. Among other things, I lead Meta's Privacy and Data Practices Organization (formerly known as the Privacy Organization), a dedicated group charged with implementing and operating the comprehensive Privacy Program.

Meta's Investments in and Design of the Privacy Program

5. During my tenure as CPO, between 2019 and 2023, Meta has spent $5.5 billion on the Privacy Program and related privacy initiatives. This investment covers [redacted]

[redacted]. For example, this investment includes funding for our [redacted] as discussed in the 2023 Assessment Report.

6. This $5.5 billion investment enabled, among other things, Meta to design and implement an expansive Privacy Program that is anchored to privacy and compliance best practices. As part of those efforts, among many other things, Meta adopted [redacted]

Initial Assessment

7. Part of Meta's expansive approach to its Privacy Program, and Order compliance more broadly, included continual transparency with the Commission before and during the initial Assessment. Since the Order was announced, Meta has held at least twelve bilateral meetings with the Commission staff to provide updates regarding Meta's Order compliance and Privacy Program efforts.

8. Meta and the Independent Assessor also kept the Commission apprised of updates regarding Meta's Privacy Program and the Assessment before and during the course of the six-month, initial Assessment. Meta and the Independent Assessor met jointly with Commission staff starting in September 2020—prior to the start of the initial Assessment—to ensure visibility for the Commission into the status of Meta's Privacy Program and the Assessor's testing plans.

Meta and the Assessor continued to meet regularly with Commission staff, ultimately holding five meetings regarding the six-month initial Assessment to update the staff on testing progress and the Assessor's findings.

9. The six-month initial Assessment culminated in the Independent Assessor's initial Assessment Report, dated June 21, 2021, which Meta submitted to the Commission on July 1, 2021. A copy of the July 1, 2021 letter that Meta submitted to the Commission enclosing that initial Assessment Report has been provided as Exhibit A accompanying Meta's contemporaneous filings.

First Biennial Assessment and Continued Program Maturation

10. The Independent Assessor undertook its first biennial Assessment of Meta's comprehensive Privacy Program between April 23, 2021 and April 22, 2023. On or around May 3, 2023, the Independent Assessor and Meta again met jointly with Commission staff. The Independent Assessor presented to the staff on the progress of Meta's comprehensive Privacy Program, including Meta's actions to address the findings from the initial Assessment Report, and the Independent Assessor's findings from the first biennial Assessment. A copy of the Independent Assessor's presentation to Commission staff, titled "2023 Assessment Status & Report Update," has been provided as Exhibit B accompanying Meta's contemporaneous filings.

11. The first biennial Assessment culminated in the 2023 Assessment Report, dated June 21, 2023, which Meta submitted to the Commission on June 30, 2023. A copy of the June 30, 2023 letter that Meta submitted to the Commission, enclosing a copy of that 2023 Assessment Report, has been provided as Exhibit C accompanying Meta's contemporaneous filings. A copy of the 2023 Assessment Report has also been provided as Exhibit D accompanying Meta's contemporaneous filings.

12. Since the conclusion of the first biennial Assessment, Meta has continued its commitment to continuously improve its comprehensive Privacy Program. Among other things, Meta has increased the number of implemented Management Action Plans ("MAPs") addressing the Independent Assessor's findings to over [redacted] implemented MAPs (consisting of over [redacted] milestones) as of February 29, 2024, including [redacted] MAPs to address and remediate the Independent Assessor's findings from the initial Assessment. The Assessor confirmed that over [redacted] of those [redacted] MAPs had been closed to the Assessor's satisfaction as of the conclusion of the first biennial assessment. The Assessor has since confirmed that Meta has addressed and remediated the remainder of the related findings through its MAPs, which remain subject to ongoing testing.

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

DATED: March 14, 2024

Michel Protti

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

EXPERT REPORT OF LARRY D. THOMPSON

TABLE OF CONTENTS

I. INTRODUCTION 4

II. QUALIFICATIONS 5

III. ENGAGEMENT 7

IV. SUMMARY OF EXPERT OPINIONS 7

V. BACKGROUND FACTS 10

A. Overview of the Assessor's Role and Mandate 12

B. Overview of the Company's Efforts during the Independent Privacy Program Assessments 15

C. Overview of the Relevant Third-Party Guidance 17

VI. STATEMENT OF OPINIONS AND THE BASIS AND REASONS FOR THE OPINIONS 19

A. Based on My Experience and the Assessor's Own Conclusions, the Company has Established a Comprehensive Privacy Program, and the Company had Key Foundational Elements of an Effective Privacy Program in Place at the Time of the Assessor's Initial Report. 19

i. Comprehensive Privacy Program 20

ii. Foundational Elements of an Effective Privacy Program 21

iii. Management Commitment to a Culture of Compliance 22

iv. The Company's Privacy Program is Adequately Resourced and Empowered to Function Effectively 26

v. Monitoring and Remediation 28

B. Compliance Improvements Must Be Allowed to *Evolve Over Time*, and the FTC's Order to Show Cause Makes Premature and Inaccurate Conclusions About Meta's Privacy Program. 31

C. To Promote Lasting Change, Independent Third-Party Reviews Must be Remedial, Not Punitive, and the FTC's 2023 Proposed Decision and Order Takes a Punitive Approach that Violates this Principle. 37

D. The Punitive Approach Taken in the FTC's 2023 Proposed Decision and Order Will *Likely Discourage Other Companies* From Agreeing to an Independent Third-Party Review, From Making Comprehensive Improvements in Compliance, and From Engaging in Productive and Collaborative Relationships with Independent Third-Party Reviewers. 41

E. The FTC's Proposed Decision and Order is also Needlessly Intrusive and Would Improperly Insert the Assessor into Meta's Business Decision-making, Likely with Many Negative, Unintended Consequences. 43

VII. CONCLUSION 49

LIST OF EXHIBITS

EXHIBIT	DESCRIPTION
1	Curriculum Vitae of Larry D. Thompson
2	Materials Reviewed
3	Analysis of the Assessor's Initial Report, Appendix A "Safeguard Listing"

I. INTRODUCTION

In enforcement actions over the past few decades, federal agencies increasingly have relied on "independent third-party reviewers" or "monitors" (such as the "Assessor" in this action) to assess and monitor a company's compliance with an agreement to resolve the enforcement action.

Government enforcers often lack sufficient "hands-on" experience or time in corporate compliance to determine what works, and what does not work, in helping an organization make lasting changes in compliance.

I have had both direct professional experience and personal knowledge of the legal and practical issues that the government and the company each face when an independent third-party reviewer is involved. This experience and knowledge derive from my service as:

- Partner and Special Matters Practice Group Inaugural Team Leader at the law firm of King & Spalding LLP (1986-2001);
- Deputy Attorney General of the United States (2001-2003);
- General Counsel and as Executive Vice President of PepsiCo, Inc. (2004-2014); and
- Independent Compliance Monitor and Independent Compliance Auditor for Volkswagen AG (2017-2020), which I understand was one of the largest and most complex monitorships ever established by the U.S. government.

In this Report, based on my 40+ years of experience, I discuss certain aspects of the Federal Trade Commission's ("FTC") proceedings regarding Meta Platforms, Inc. ("Meta" or the "Company"), formerly Facebook, Inc. ("Facebook"). This Report highlights what I have found are the best practices and generally-accepted principles for a monitor, assessor, or other third-party reviewer to help a company create lasting improvements in compliance. These principles include:

A. Compliance improvements must be allowed to *evolve over time*, through trial and error, in a collaborative, give-and-take relationship with the third-party reviewer. To make lasting change, that process is expected to take years.

B. To help create a culture of compliance, the monitor/assessor is most effective by *building a relationship of trust* with the company, which encourages transparency within the organization and a willingness to reveal deficiencies. A "remedial" approach using the least intrusive means, not a "punitive" one, is most effective. Otherwise, the opportunity for lasting improvement that a monitor/assessor presents can be lost.

C. On the other hand, a "punitive" approach not only undermines the company's chances to adopt a culture of compliance, but also *likely discourages other companies* from agreeing to monitorships or use of independent third-party reviewers, and from making lasting compliance improvements.

I explain in this Report why the FTC's conclusion that Meta "failed to establish and implement an effective privacy program mandated by Part VII of the 2020 Order"[1] is inaccurate, premature, and inconsistent with the Assessor's findings. I also discuss how the FTC's actions violate the principles described above and risk squandering an opportunity to create lasting compliance improvements. The FTC's Proposed Decision and Order takes a "gotcha," punitive approach, which not only will likely undermine creating a culture of compliance at Meta, but also will *likely discourage other companies* from agreeing to independent third-party reviewers or even to attempt wide-ranging improvements in compliance. The FTC's approach is also needlessly intrusive, by injecting the Assessor into internal decision-making at the Company, an area traditionally reserved to state corporation law.

II. QUALIFICATIONS

1. My background and experience that are particularly relevant to the issues in this matter include the following:

2. I have a Juris Doctor (J.D.) Law degree from the University of Michigan, a Master's degree from Michigan State University, and a Bachelor of Arts degree from Culver-Stockton College. I also have an Honorary Doctor of Laws degree from Pace University in New York and an Honorary Doctorate from St. Louis University.

3. I have held two positions within the United States Department of Justice ("DOJ"): Deputy Attorney General (2001-2003) and United States Attorney for the Northern District of Georgia (1982-1986). In 2002, during my tenure as Deputy Attorney General, I was named to the National Security Coordination Council by Attorney General John Ashcroft, and President Bush asked me to lead the government-wide Corporate Fraud Task Force. While I was a United States Attorney, I served on the Attorney General's Economic Crime Council.

4. As Deputy Attorney General, I was responsible for overseeing the Chief Privacy Officer at the DOJ, Daniel P. Collins, who is now a Judge of the United States Court of Appeals for the Ninth Circuit. He advised me in my capacity as Deputy Attorney General concerning overarching privacy policy issues.

5. From 1986 to 2001, between my years of service in DOJ described above, I was a partner with the law firm of King & Spalding, where I was team leader of the firm's Special Matters practice group. My practice focused on white-collar criminal defense.

6. After leaving DOJ, in 2004 I joined PepsiCo, Inc. From 2004 to 2011, I served as PepsiCo's Senior Vice President of Government Affairs, General Counsel, and Secretary. I retired from PepsiCo until July 2012, when I returned to the company. I then served until December 2014

[1] *2023 Order to Show Cause* at 4, 12.

as PepsiCo's Executive Vice President of Government Affairs, General Counsel, and Corporate Secretary, with responsibility for the company's worldwide legal function as well as its compliance, government affairs, and public policy organizations.

7. During my tenure at PepsiCo, the company was subject to a Consent Order from the FTC in which a Monitor had oversight over PepsiCo's compliance with the requirements of the Consent Order regarding commercially sensitive information. Part of the Monitor's role was to provide advice and assistance to PepsiCo as it developed and implemented procedures to comply with the requirements of the Order. Through a collaborative relationship with the Monitor, PepsiCo succeeded in developing more effective procedures to protect commercially sensitive information.

8. Since leaving PepsiCo, Inc., I have served as Counsel to Finch McCranie, LLP in Atlanta, Georgia.

9. I have also served on the University of Georgia School of Law's faculty as the holder of the John A. Sibley Chair of Corporate and Business Law.

10. Beginning in 2016, I also began serving as Chairman of the Board of Directors of the Ethics Research Center (ERC), the research arm of the Ethics & Compliance Initiative (ECI). ECI is a best practice community of organizations, ethics and compliance professionals, and academics from all over the world who are committed to creating and sustaining high quality ethics and compliance programs.[2] "Through its research, ECI identifies the practices that improve ethics [and] compliance program effectiveness and build institutional culture strength."[3] "ECI also has an established track record of providing support to organizations seeking to transform their cultures, often in the wake of significant challenges with noncompliance."[4]

11. In 2017, after Volkswagen AG ("VW") entered into a U.S. criminal Plea Agreement and civil Consent Decrees with DOJ relating to diesel emissions, DOJ requested that I serve as the Independent Compliance Monitor and Auditor for Volkswagen AG. In those capacities, I worked closely both with the company and with the DOJ to ensure the company's compliance with its Plea Agreement and Third Partial Consent Decree, entered into as a result of criminal and civil proceedings against the company. This approximately three-year role included evaluation of the company's compliance programs and policies across its worldwide network of companies. I also served as Independent Compliance Auditor pursuant to the company's Third California Partial Consent Decree between the State of California and the same VW entities.

12. A copy of my curriculum vitae, which summarizes my qualifications and professional experience, is attached hereto as **Exhibit 1**.

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[2] Ethics and Compliance Initiative, https://www.ethics.org/about/ (last visited Oct. 28, 2023).
[3] *Id.*
[4] *Id.*

III. ENGAGEMENT

1. I have been asked by Davis Polk & Wardwell LLP ("Davis Polk") to serve as a consulting and, if necessary, testifying expert witness for Meta in connection with potential litigation and the administrative proceedings arising from the FTC's May 3, 2023 Order to Show Cause in the Matter of Facebook, Inc. C-4365 (the "Litigation").

2. I am being compensated at a rate of $1,350 per hour, and other personnel working under my direction at Finch McCranie, LLP ("Finch McCranie") and StoneTurn Group, LLP ("StoneTurn") are being compensated at rates ranging from $725 - $1,100 per hour.[5] The fees paid to me, Finch McCranie, and StoneTurn are not contingent on the outcome of this matter or on the opinions provided herein, and are consistent with standard rates.

3. This Report summarizes my current opinions given the information made available to me to date. In the event additional information becomes available, I reserve the right to amend or supplement my opinions as necessary.

4. As part of my work, I considered a variety of sources of information, which are listed in **Exhibit 2**.

IV. SUMMARY OF EXPERT OPINIONS[6]

Based on my education, experience, and review of the record of proceedings and other information and analyses discussed in this report, I have formed the opinions set forth below. I explain why the FTC's conclusion that Meta "failed to establish and implement an effective privacy program mandated by Part VII of the 2020 Order"[7] is inaccurate, premature, and inconsistent with the Assessor's findings.

The FTC's Proposed Decision and Order unwisely takes a "punitive" approach that violates widely accepted principles of monitorships, which urge a "remedial" approach. The FTC's proposed actions would risk squandering an opportunity to create lasting compliance improvements at Meta, and they would likely deter other companies from utilizing monitors and making enduring improvements in compliance. Further, the FTC's proposed actions are needlessly intrusive and outside its authority, because they would inject the Assessor into the Company's internal decision-making, an area traditionally reserved to state corporate law. The FTC's Proposed Decision and Order will risk many other unintended, negative consequences, in attempting to significantly expand the current, "unprecedented" restrictions on the Company that the FTC and Meta negotiated in their 2019 settlement and 2020 Order.

My opinions are summarized here and discussed in detail below:

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[5] As used herein, other than references to my education and experience, "I" and "We" shall mean either I personally or those Finch McCranie and StoneTurn personnel under my supervision. Also, "My," "Our," and "Us" shall also refer to actions taken by me personally or by those Finch McCranie and StoneTurn personnel under my supervision.
[6] The capitalized terms used in the below expert opinions are defined later in the document.
[7] *2023 Order to Show Cause* at 12.

A. Based on my experience and the Assessor's own conclusions, the Company has established a comprehensive Privacy Program, and the Company had key foundational elements of an effective Program in place at the time of the Assessor's initial report.

Based on the Assessor's own conclusions, Meta established a comprehensive Privacy Program, and had key foundational elements of an effective program in place at the time of the initial report – after only six months of a twenty-year term. The Assessor's conclusions are also consistent with my experience in implementing, overseeing, and evaluating compliance programs.

Both Assessor reports reflect that Meta had implemented key foundational elements of an effective program that are particularly relevant to Meta's Privacy Program and that, based on my experience, are areas that are critically important to the long-term sustainability of an effective compliance program. These elements include management commitment to a culture of compliance, an adequately resourced and empowered privacy function, and monitoring and remediation.

The Assessor's conclusions contradict the FTC's stated view that Meta "failed to establish and implement an effective privacy program mandated by Part VII of the 2020 Order."[8]

B. Compliance improvements must be allowed to evolve over time, and the FTC's Order to Show Cause makes premature and inaccurate conclusions about Meta's Privacy Program.

All good compliance programs should constantly improve, evolve, and mature over time. Throughout the course of the twenty-year term, Meta and the Assessor will engage in a give-and-take process that is designed to help the Company continue to enhance its Privacy Program.

Rather than merely tweak its former program, to its credit, Meta created an entirely new program. It implemented extensive foundational changes to create a more effective and sustainable program over the long term. Because of the wholesale changes Meta implemented, its collaboration with any monitor or assessor is expected to identify gaps and weaknesses, which in my experience are opportunities for the program to improve over time. The existence of gaps and weaknesses should not lead to a conclusion regarding effectiveness, particularly in the initial report of the Assessor.

The Independent Privacy Program Assessment is a twenty-year undertaking by the Company, the Assessor, and the FTC. At the time of the Assessor's initial report, only six months of the twenty-year term had passed. The FTC's conclusions about the program are premature and inaccurate. The FTC's Proposed Decision and Order violates these and other established principles of monitorships.

[8] *Id.*

C. To promote lasting change, independent third-party reviews must be remedial, not punitive, and the FTC's 2023 Proposed Decision and Order takes a punitive approach that violates this principle.

Based on my experience and the observations of many authorities, a monitor or assessor must take a remedial approach to help a company create lasting compliance improvements. A stronger, long-lasting program is more likely to emerge if the company and independent third-party reviewer build a relationship of open communication, transparency, trust, and collaboration.

In contrast, independent third-party reviews are not meant to be punitive. A punitive approach will likely result in an adversarial relationship with the company, which is damaging to a monitorship and will likely hinder the development and implementation of a strong and sustainable program. In this matter, the Assessor has already begun to play a valuable remedial role, in a cooperative effort with Meta.

The FTC's 2023 Order to Show Cause seeks to take a punitive approach that will hurt compliance efforts in many ways described below.

D. The punitive approach taken in the FTC's 2023 Proposed Decision and Order will *likely discourage other companies* from agreeing to an independent third-party review, from making comprehensive improvements in compliance, and from engaging in productive and collaborative relationships with independent third-party reviewers.

If the FTC violates established monitorship principles by employing a punitive approach, it not only will squander the chance of causing lasting improvements at Meta, but also will likely deter *other* companies from agreeing to an independent third-party review. In addition, a punitive approach will likely dissuade other companies from implementing lasting compliance improvements, and from engaging in productive, collaborative relationships with independent third-party reviewers.

E. The FTC's Proposed Decision and Order is also needlessly intrusive and would improperly insert the Assessor into Meta's business decision-making, likely with many negative, unintended consequences.

The FTC's Proposed Decision and Order would far exceed what the FTC itself has already described as "unprecedented" restrictions on Meta from the 2020 Order by allowing, among other things, the Assessor's findings from the Privacy Program Assessments to potentially block the release of new or modified products, services, and features. Based on my experience, this approach is a dramatic departure from accepted principles of monitorships and is overly intrusive into Meta's business – thus violating traditional principles and best practices of third-party reviewers.

The FTC's Proposed Decision and Order also needlessly blurs traditional legal boundaries between the Assessor and company management, and may result in numerous unintended consequences, such as potentially impairing the Assessor's independence and objectivity and undermining state corporate law principles.

V. BACKGROUND FACTS

1. In arriving at my opinions, I have reviewed the pertinent record materials and understand that the following proceedings and actions regarding Meta have occurred:

2. In 2012, the FTC issued a Complaint against Meta in Docket C-4365 that charged the Company with unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) ("Section 5"). Meta agreed to a consent order to settle the 2012 Complaint ("2012 Order").[9]

3. In 2019, the DOJ filed a Complaint alleging that Meta violated the 2012 Order. To resolve the 2019 case, Meta agreed to a Stipulated Order for Civil Penalty, Monetary Judgment, and Injunctive Relief on or about July 23, 2019. Pursuant to this agreement, Meta consented to reopen the administrative proceedings and modify the 2012 Order with a revised Decision and Order.[10] On April 27, 2020, the FTC issued a modified order that expanded and clarified the 2012 Order ("2020 Order" or "Order").[11]

4. Section VII of the 2020 Order required that the Company "establish and implement, and thereafter maintain a comprehensive privacy program ('Privacy Program')" to protect the privacy, confidentiality, and integrity of information from or about an individual consumer. It also outlined numerous minimum requirements that Meta had to comply with within 180 days of the effective date of the Order.[12]

5. Section VIII of the 2020 Order required Meta to obtain initial and biennial assessments of its Privacy Program ("Independent Privacy Program Assessments" or "Assessment") from independent third-party professionals ("Assessor(s)").[13] The reporting period for the Independent Privacy Program Assessments was required to cover (1) the first 180 days after the Privacy Program had been put in place for the initial Assessment; and (2) each two-year period thereafter for twenty (20) years after issuance of the Order for the biennial Assessments.[14]

6. As required under Section VIII.C of the 2020 Order, the Assessor issued its initial report on July 1, 2021 ("Assessor's initial report") covering the first 180 days that the Privacy Program was put in place, October 25, 2020 to April 22, 2021 ("initial assessment period").

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[9] *Decision and Order*, *In the Matter of Facebook*, *Inc.*, FTC Docket No. C-4365 (July 27, 2012).
[10] *Stipulated Order for Civil Penalty, Monetary Judgment, and Injunctive Relief*, *United States v. Facebook, Inc.*, Case No. 19-cv-2184, ECF No. 35 (D.D.C., Apr. 23, 2020).
[11] *Order Modifying Prior Decision and Order*, *In the Matter of Facebook, Inc.*, FTC Docket No. C-4365 (April 27, 2020).
[12] *2020 Order*, Section VII at 8.
[13] *Id.* at Section VIII.A at 12.
[14] *Id.* at Section VIII.C at 13.

7. On May 3, 2023, the FTC issued an Order to Show Cause Why the Commission Should Not Modify the Order ("Order to Show Cause") and Enter the Proposed New Order, which set forth proposed modifications to the FTC's 2020 Order and included certain findings from the Assessor's initial July 1, 2021 report.[15]

8. In conjunction with the Order to Show Cause, the FTC sought a 2023 Proposed Decision and Order ("Proposed Decision and Order"), which proposed further and more restrictive requirements on the Company.[16] The Proposed Decision and Order proposes to amend certain aspects of Section VII of the 2020 Order:

- Privacy Program Requirement Modifications – The requirement under the 2020 Order to "establish and implement, and thereafter maintain a comprehensive privacy program ('Privacy Program') *that protects the privacy, confidentiality, and Integrity of the Covered Information collected, used, or shared by [Meta]*"[17] was expanded and now would require Meta to "establish and implement, and thereafter maintain a comprehensive privacy program ('Mandated Privacy Program') that *effectively mitigates Privacy Risks and Harms*."[18]

- Pause on New Products and Features – A new provision that would prohibit the Company from releasing any new or modified product, service, or feature until it can demonstrate – through written confirmation from the qualified, independent third-party assessor – that its privacy program fully complies with the Order and has no material gaps or weaknesses;[19]

- Use of Teens' and Children's Information – A new provision that would impose strict limitations on the Company's ability to use information it collects from children and teens and prohibits monetizing data of children and teens under 18;[20]

- Other Modifications – Additional modifications include an extension of existing protections to the Company's future uses of facial recognition templates; broadened protections related to changes in its data practices; expansion of the Company's mandatory reporting obligations; extension of compliance to merged companies; and strengthened existing requirements related to privacy review, third-party monitoring,

[15] *Order to Show Cause Why the Commission Should Not Modify the Order and Enter the Proposed New Order, In the Matter of Facebook, Inc*., FTC Docket No. C-4365 (May 3, 2023).
[16] *Proposed Decision and Order*, *In the Matter of Facebook, Inc.*, FTC Docket No. C-4365 (May 3, 2023).
[17] *2020 Order*, Section VII at 8 (emphasis added).
[18] *2023 Proposed Decision and Order* at 12 (emphasis added).
[19] *2023 Order to Show Cause* at 12-13.
[20] *Id.* at 12*; FTC Proposes Blanket Prohibition Preventing Facebook from Monetizing Youth Data, F.T.C. Press Releases* (May 3, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-proposes-blanket-prohibition-preventing-facebook-monetizing-youth-data (last visited Oct. 9, 2023).

data inventory and access controls, and employee training.[21]

9. As required under Section VIII.C of the 2020 Order, the Assessor issued its first biennial report ("Assessor's first biennial report") on June 21, 2023, which covers the two-year period from April 23, 2021 to April 22, 2023 ("current assessment period").

A. Overview of the Assessor's Role and Mandate

10. Section VIII.A of the 2020 Order lists various requirements regarding the Independent Privacy Program Assessments and the responsibilities of the Assessor. Specifically, the Assessor must (1) use procedures and standards generally accepted in the profession; and (2) conduct an independent review of the Mandated Privacy Program.[22]

11. Furthermore, Section VIII.D of the 2020 Order outlines the mandate of the Assessor and requires that each assessment must:

- determine whether Meta has implemented and maintained the Privacy Program required by Part VII.A-J of the Order;[23]
- assess the effectiveness of Meta's implementation and maintenance of each subpart in Part VII of the Order; [24]
- identify any gaps or weaknesses in the Privacy Program; [25]
- identify specific evidence examined to make its assessments and explain why the evidence is sufficient to justify the Assessor's findings;[26] and
- assess the effectiveness of revised, updated, or added safeguards.[27]

12. The role and mandate of the Assessor under the 2020 Order is similar to the role of other independent third-party reviewers that government departments and agencies employ to assess and monitor a company's compliance with an agreement resulting from an enforcement action. In these situations, independent third-party reviewers are intended to reduce the risk of recurrence of the company's misconduct[28] and to oversee remediation efforts. The more common term used for an independent third-party reviewer function is "monitor," although terms such as "auditor,"

[21] *2023 Order to Show Cause* at 13.
[22] *2020 Order*, Section VIII.A at 12.
[23] *Id.* at Section VIII.D at 13.
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, 2d. Ed. at 73, 74 (July 2020), https://www.justice.gov/criminal-fraud/file/1292051/download (last visited Oct. 9, 2023).

"consultant," or "ombudsperson" are also sometimes used.[29]

13. In a 2016 DOJ memorandum, then-Acting Associate Attorney General Stuart F. Delery stated, "the term 'monitor' includes any third party whose job is to monitor the opposing party's compliance with the terms of any civil settlement agreement or resolution, whether called a 'monitor,' 'trustee,' 'auditor,' or other name."[30]

14. Thus, consistent with common usage, I will use the term "monitor" in this Report to apply interchangeably to any independent third-party reviewer or assessor.

15. Regardless of the title used, independent third-party reviewers, assessors, and monitors have common goals and objectives, and utilize similar standards and policies to conduct their work. These individuals are required to provide the regulator, enforcement agency, or organization with an impartial evaluation of the monitored entity's remediation efforts.[31]

16. Ultimately, the goal and purpose of a third-party reviewer, such as the Assessor of Meta, is to improve the company's compliance program by facilitating lasting and meaningful change.

17. To meet these objectives, monitors and independent third-party reviewers have similar responsibilities and typically perform the following activities:

- Making an initial assessment of the program and identifying gaps and weaknesses;
- Providing recommendations and assessing the company's remediation efforts to help improve their programs throughout the term;
- Evaluating the development and implementation of the program, and assessing its effectiveness; and
- Conducting ongoing assessments of the program and issuing multiple reports over the term.

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[29] Thomas F. O'Neill III and Brendan Kennedy, *Answering to a Higher Authority: Sovereign-Mandated Oversight in the Board Room and the C-Suite*, 17 Fordham J. Corp. & Fin. L. at 299, 304-305 (2012). As another leading commentator observed, "[t]his Article uses the term monitor because that word has become a term of art for this kind of independent, private outsider. This term is used in scholarship, the news media, and DOJ guidance and settlement agreements. It appears to be the term of consensus. Agreements will, however, often use terms other than monitor, like the term 'independent consultant.'" Veronica Root, *Modern-Day Monitorships*, 33 Yale J. on Reg. at 109 n.2 (2016).

[30] Memorandum from Stuart F. Delery, Acting Associate Att'y Gen. of the United States, *Statement of Principles for Selection of Corporate Monitors in Civil Settlements and Resolutions* (Apr. 13, 2016), https://www.justice.gov/oip/foia-library/asg_memo_statement_of_principles_corporate_monitors_civil_settlements/download (last visited Oct. 9, 2023); Veronica Root, *Modern-Day Monitorships*, 33 Yale J. on Reg. at 109 (2016).

[31] Bart M. Schwartz, *When do Enforcement Agencies Decide to Appoint a Monitor?,* Global Investigations Review, The Guide to Monitorships, 3d. Edition (Apr. 25, 2022), https://globalinvestigationsreview.com/guide/the-guide-monitorships/third-edition/article/when-do-enforcement-agencies-decide-appoint-monitor (last visited Oct. 9, 2023).

18. These independent third-party reviewers are required to remain independent and objective in all their activities, and to "avoid any conduct that may impair, or appear to impair . . . impartiality and objectivity." [32]

19. As noted above, I have had both direct professional experience and personal knowledge of the legal and practical issues that the government and the company face when an independent third-party reviewer is involved. That experience and knowledge was obtained over my career as a Partner at King & Spalding advising companies subject to a monitorship or third-party review, and in my service as Deputy Attorney General, my positions with PepsiCo, Inc., and most recently as Independent Compliance Monitor and Auditor for VW. My collective experiences also provide me, I believe, with a unique understanding of the good – or harm – that can result from the use of independent third-party reviewers.

20. In my role as Independent Compliance Monitor and Auditor for VW, among my responsibilities were to assess, oversee, and monitor VW's compliance with the terms of the Plea Agreement and oversee VW's obligations of the Third Partial Consent Decree. I was responsible for evaluating VW's implementation and enforcement of its compliance and ethics program for the purpose of preventing future criminal fraud and environmental violations by VW and its affiliates.[33] This responsibility included an assessment of the Board of Management's and Senior Management's commitment to, and effective implementation of, the corporate compliance and ethics program.[34]

21. As VW Monitor, I was also required to issue four reports that set forth my assessment and, if necessary, to make recommendations reasonably designed to improve the effectiveness of VW's program for ensuring compliance with anti-fraud and environmental laws. In the final written report ("Certification Report"), I was required to set forth an overview of VW's remediation efforts to date, including the implementation status of my recommendations, and an assessment of the sustainability of VW's remediation efforts.[35] At the end of the term, I was required to certify whether VW's compliance program, including its policies and procedures, were reasonably designed and implemented to prevent and detect violations of the anti-fraud and environmental laws.[36]

22. As another example noted above, during my tenure at PepsiCo, Inc., PepsiCo was subject to a Consent Order from the FTC in which a Monitor had oversight over PepsiCo's compliance with the requirements of the Consent Order regarding commercially sensitive information. Part of

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[32] *Monitors*, ABA Criminal Justice Standards, Part IV at ¶ 1, https://www.americanbar.org/groups/criminal_justice/standards/MonitorsStandards/ (last visited Oct. 9, 2023).
[33] *Rule 11 Plea Agreement*, *United States v. Volkswagen AG*, No. 16-CR-20394, ECF No. 68 at 73-86, Ex. 3 (E.D. Mich, Mar. 10, 2017).
[34] *Id.*
[35] *Id.*
[36] *Id.*

the Monitor's role was to provide advice and assistance to PepsiCo as it developed and implemented procedures to comply with the requirements of the Order, which helped PepsiCo develop more effective procedures to protect commercially sensitive information.

23. I am familiar with other DOJ settlement agreements, including deferred prosecution agreements, in which the monitor's responsibility and reporting requirements are similar to those of the Assessor here.

B. Overview of the Company's Efforts during the Independent Privacy Program Assessments

24. The Assessor issued its initial report on June 21, 2021, and its first biennial report on June 21, 2023. My report focuses primarily on the information provided in the Assessor's initial report.

25. In its initial report, the Assessor reported that Meta made "extensive investments in its privacy program,"[37] including by implementing more than [redacted] Safeguards[38] across numerous control domains, and growing its privacy-dedicated headcount from approximately [redacted] employees to more than [redacted] employees.[39] Later in this Report, I discuss some of Meta's other compliance improvements noted by the Assessor in its initial report. Additionally, the Assessor's reports reflect that Meta management and other Company representatives have provided significant effort in terms of time and cooperation, flexibility and access, and transparency throughout the assessment periods.[40]

26. First, the Assessor described the significant cooperation and time dedicated by the Company regarding document and meeting requests. For example, the Assessor's initial report stated that its professionals contributed over [redacted] hours to the assessment and submitted more than [redacted] requests to obtain and review evidence regarding Meta's compliance activities, including more than [redacted] policies, procedures, management reports, training materials, and other key documents.[41] The Assessor also reported that it conducted over [redacted] interviews and process walkthroughs with Meta management to evaluate Safeguard design effectiveness and observe the Company's compliance controls in practice, and it performed approximately [redacted] sample tests to assess the operating effectiveness of Meta's Safeguards.[42] Further, the Assessor acknowledged and expressed appreciation for the "extensive access to, and cooperation provided by [Meta] leadership throughout our Assessment."[43]

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[37] Protiviti, *Initial Privacy Program Assessment Report* at 3 (Jun. 21, 2021).
[38] *See* Exhibit 3.
[39] Protiviti, *Initial Privacy Program Assessment Report* at 2 (Jun. 21, 2021).
[40] This includes both the initial and current assessment periods.
[41] Protiviti, *Initial Privacy Program Assessment Report* at 1 (Jun. 21, 2021).
[42] *Id.*
[43] *Id.* at 2.

27. The Assessor's first biennial report provided further examples of the Company's extensive time expended and cooperation. For example, the Assessor reported that its professionals contributed over [redacted] hours and submitted more than [redacted] requests during the current assessment to obtain and review evidence regarding Meta's compliance activities, including more than [redacted] policies, procedures, management reports, training materials, and other key documents.[44] The Assessor also reported that it conducted over [redacted] walkthroughs and meetings with Meta management to evaluate Safeguard design effectiveness and observe the Company's compliance controls in practice, and it performed approximately [redacted] sample tests to assess the operating effectiveness of Meta's Safeguards.[45]

28. In addition, the Assessor credited Meta for its flexibility and access during both review periods. For example, the Assessor's initial report described that Meta's Privacy Program and the Safeguards surrounding it remained subject to a "significant degree of change throughout [the] Assessment Period" and acknowledged the "flexibility and close coordination" required to understand implementation timelines and align evaluation schedules accordingly.[46] The Assessor also reported that it met with key members of Meta's management throughout the initial assessment period, including the Independent Privacy Committee (IPC) of the Board of Directors, the IPC Chairwoman, members of Meta's management team, and outside legal advisors to inform them of the progress of the Assessment and of the gaps and weaknesses that were identified.[47]

29. The Assessor's first biennial report provided further examples of the Company's flexibility and access. For example, in addition to meeting with members of Meta's IPC of the Board of Directors, the Assessor met with Meta's Chief Privacy Officer-Product and other members of the Privacy Program Leadership team to inform them of the progress of the assessment and of the gaps that were identified.[48]

30. Finally, the Assessor acknowledged the Company's transparency throughout both review periods. For example, the Assessor's initial report stated that [redacted][50]

31. The Assessor's first biennial report provided further examples of the Company's

[44] Protiviti, *First Biennial Privacy Program Assessment Report* at 5 (Jun. 21, 2023).
[45] *Id.* at 5-6.
[46] *Initial Privacy Program Assessment Report* at 1-2.
[47] *Id.* at 1.
[48] *First Biennial Privacy Program Assessment Report* at 6.
[49] Safeguards are the processes and controls put in place by Meta to control internal and external risks related to the Respondent's unauthorized collection, use, or disclosure of covered information. *See 2012 Decision and Order*, Section IV at 5.
[50] *Initial Privacy Program Assessment Report* at 2.

transparency. For example, the Assessor stated that Meta [redacted][51]

32. Based on my experience, not all companies being monitored are as cooperative, flexible, and transparent as Meta has been described in the Assessor's observations. For example, in my first publicly available report as Independent Compliance Auditor of Volkswagen, I reported a lack of cooperation.[52] Additionally, I reported that occasionally I contended with VW's reluctance to share certain information, that I had discussed this issue with VW personnel on numerous occasions throughout the reporting period, and that I had documented my concerns.[53] I reported that the issue must be promptly resolved in the next reporting period for me to effectively perform my duties.[54] In contrast, as discussed above, the Assessor has provided numerous examples of Meta's significant efforts in time, cooperation, flexibility, access, and transparency throughout the assessment periods.

C. Overview of the Relevant Third-Party Guidance

33. My opinions are based not only on my background and experience, but also on frameworks and criteria established by regulators, various government pronouncements, authoritative literature, and other relevant third-party guidance regarding effective compliance and privacy programs. These sources include, but are not limited to:

- U.S. DOJ, Evaluation of Corporate Compliance Programs ("ECCP") (2023)

The DOJ ECCP provides guidance on the key foundational elements for evaluating the adequacy and effectiveness of a corporation's compliance program.[55]

The DOJ describes the following components as strong indicators of an effective compliance program: its capacity to improve and evolve; a company's culture of compliance; the sufficiency of resources with adequate authority, stature, and autonomy; the nature and thoroughness of the company's remedial efforts; the commitment by company leadership; and the tone-at-the-top. This guidance also states that the existence of misconduct does not by itself indicate that a compliance program was ineffective.[56]

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[51] *First Biennial Privacy Program Assessment Report* at 22.
[52] Larry D. Thompson, LLC, *First Annual Report by the Independent Compliance Auditor for the VW Defendants* (Aug. 17, 2018), https://www.vwcourtsettlement.com/wp-content/uploads/2018/08/ICAR-Aug2018-English.pdf (last visited Oct. 9, 2023).
[53] *Id.*
[54] *Id.*
[55] *Evaluation of Corporate Compliance Programs,* U.S. Dept. of Justice at 1 (updated March 2023).
[56] *Id.* at 9-11, 14-16.

- U.S. DOJ, Resource Guide to the U.S. FCPA, 2nd Edition (2020)

The DOJ and SEC developed this resource guide that provides guidance on topics that include detecting and preventing FCPA violations and implementing effective compliance programs.[57] It includes guidance on key concepts relevant to monitorships and the evaluation of compliance programs.

For example, the resource guide provides insights and requirements regarding the intended role of a monitor – specifically that a monitor should never be imposed for punitive purposes and the importance of a positive relationship between the company and the monitor for a strong and long-lasting program.[58] The resource guide also describes numerous components of an effective compliance program, including the concept that good compliance programs should constantly evolve; the importance of avoiding "paper programs"; and the importance of a strong organizational culture.[59] The resource guide also reiterates that companies are not held to a standard of perfection when it comes to identifying and preventing violations.[60]

- AICPA Privacy Management Framework ("PMF") (2020)

The Privacy Management Framework (PMF)[61] is used as a foundational element in establishing an effective information privacy program that addresses privacy obligations and risks, while facilitating current and future business opportunities.[62] The framework is based on nine components that govern how to establish and manage privacy programs and risks from a business perspective.[63]

- National Institute of Standards and Technology ("NIST") Privacy Framework (2020)

NIST published the *Privacy Framework: A Tool for Improving Privacy through Enterprise Risk Management (Privacy Framework)* to enable better privacy engineering practices that support privacy by design concepts and help organizations protect individuals' privacy.[64] Among other things, the Privacy Framework is meant to support organizations in fulfilling compliance obligations.[65] The framework provides guidance on several concepts related to privacy

[57] *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, 2d. Ed. at 1.
[58] *Id*. at 74.
[59] *Id*. at 58, 66.
[60] *Id*. at 57.
[61] The framework was previously named Generally Accepted Privacy Principles (GAPP) in August 2009, and was updated and renamed the Privacy Management Framework (PMF) in 2020.
[62] *AICPA Privacy Management Framework* (2020) at 3.
[63] *Id.* at 4, 9.
[64] *National Institute of Standards and Technology ("NIST") Privacy Framework* (2020) at i.
[65] *Id*.

programs, including the importance of building an adaptive program in which the business adapts its privacy practices based on lessons learned and new privacy risks.[66]

- American Bar Association ("ABA") Criminal Justice Standards

The ABA Criminal Justice standards present best practices for those providing oversight services to organizations, including external compliance officers.[67] These standards guide monitors through the variety of functions that they may serve so they are best able to fulfill their responsibilities.[68]

- The Life Cycle of a Monitorship, Global Investigations Review, The Guide to Monitorships, 3d. Edition (2022)

This guide takes an in-depth look at the corporate monitor, including an overview of the entire lifecycle of a monitorship, and provides guidance for addressing a culture of non-compliance.[69]

Numerous best practices are discussed, including the intended role and mandate of a monitor – specifically that a monitor is meant to evaluate a company's remediation efforts and to be forward-looking, rather than use a "gotcha" approach.[70] The guide also observes that a monitor's initial report is meant to provide an overview of a monitor's first impressions, rather than to draw premature conclusions about the company's compliance program.[71]

34. Refer to **Exhibit 2** for a complete listing of materials reviewed for this Report.

VI. STATEMENT OF OPINIONS AND THE BASIS AND REASONS FOR THE OPINIONS

A. Based on My Experience and the Assessor's Own Conclusions, the Company has Established a Comprehensive Privacy Program, and the Company had Key Foundational Elements of an Effective Privacy Program in Place at the Time of the Assessor's Initial Report.

35. As described in the Background section above, the 2020 Order provides certain requirements regarding Meta's Privacy Program, including that "[Meta] . . . shall establish and

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[66] *National Institute of Standards and Technology ("NIST") Privacy Framework* (2020) at 38.
[67] Criminal Justice Standards Committee, *ABA Standards for Criminal Justice Monitors and Monitoring,* https://www.americanbar.org/products/inv/book/395343871/ (last accessed Oct. 30, 2023).
[68] *Id.*
[69] Thomas J. Perrelli, *The Life Cycle of a Monitorship, Global Investigations Review, The Guide to Monitorships,* 3d. Ed. at xiii, 45 *(*April 25, 2022).
[70] *Id.* at 61, 66.
[71] *Id.* at 59.

implement, and thereafter maintain a comprehensive privacy program ('Privacy Program')."[72] The Order then lists ten subparts (A-J) that must be met within 180 days of the effective date of the Order.[73]

36. Also as described above, the Order states that the Assessor must "assess the effectiveness of [Meta's] implementation and maintenance of each subpart in Part VII of this Order" for each assessment performed.[74]

37. Based on the Assessor's own statements at the time of the initial report, the Assessor concluded that Meta's Privacy Program is comprehensive, and Meta's efforts under the 2020 Order demonstrate that key foundational elements of an effective program are in place. The Assessor's conclusions are also consistent with my experience in implementing, overseeing, and evaluating compliance programs, including assessing the effectiveness of those programs as Deputy Attorney General, as General Counsel of PepsiCo, Inc., and as Independent Compliance Monitor and Auditor for VW.

38. The Assessor's conclusions and my experience contradict the FTC's stated view that Meta "failed to establish and implement an effective privacy program mandated by Part VII of the 2020 Order."[75]

i. Comprehensive Privacy Program

39. In its initial report, the Assessor concluded that "the overall scope of the program and structure [redacted] into which the program is organized is logical and appropriately comprehensive."[76]

40. Furthermore, the Assessor's initial report of over 200 pages illustrates the breadth of Meta's comprehensive Privacy Program, as reflected by the Assessor's reviewing more than [redacted] policies, procedures, and other key documents and conducting more than [redacted] sample tests of approximately [redacted] Safeguards implemented by the Company across [redacted][77]

41. Finally, based on my own analysis of evidence within the Assessor's initial report, Meta implemented [redacted] Safeguards[78] across numerous control domains, which demonstrates that Meta has substantially implemented the Safeguards identified by the Company

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[72] *2020 Order*, Section VII at 8.
[73] *Id.*
[74] *2020 Order*, Section VIII.D at 13. Note that Section VII.F also requires Meta to assess, monitor, and test the effectiveness of certain Safeguards put in place.
[75] *2023 Order to Show Cause* at 12.
[76] *Initial Privacy Program Assessment Report* at 3.
[77] *Id.* at 1-2.
[78] This analysis is based on my consideration of the Assessor's initial report, Appendix A [redacted] My calculation is based on the Safeguards [redacted]

to mitigate risks. My analysis is provided in **Exhibit 3**. While the number of implemented Safeguards alone does not determine effectiveness, it is strong evidence that the Company has made substantial progress toward these goals.

ii. Foundational Elements of an Effective Privacy Program

42. In the initial assessment report, the Assessor also concluded that "the key foundational elements necessary for an effective program are now in place, although their maturity and completeness vary [redacted][79] as defined by the "framework and criteria" noted in the Assessor's initial report.[80] The Assessor's first biennial report is consistent with this statement, as the Assessor stated that ". . . the effectiveness and maturity of the control environment has notably improved based on our Assessment results reported herein."[81]

43. As described above, while the Assessor is responsible for evaluating the effectiveness of *certain components*[82] of Meta's Privacy Program within 180 days and throughout the assessment periods, the Assessor is *not* responsible for making final conclusions about the overall effectiveness of the program in the initial report. The assessment period is twenty years. The Assessor will continue to assess the effectiveness of program components as the Company's Privacy Program evolves and matures over the twenty-year term.

44. The DOJ and the Securities and Exchange Commission ("SEC") employ a common-sense and pragmatic approach to evaluating compliance programs based on three primary questions:[83]

- Is the company's compliance program well designed?
- Is it being applied in good faith? In other words, is the program adequately resourced and empowered to function effectively?
- Does it work in practice?[84]

45. This DOJ/SEC guidance and other DOJ guidance provide additional insight when addressing these three questions.

- First, when evaluating if the company's compliance program is well designed, DOJ guidance states that the comprehensiveness of the compliance program should be evaluated and well-integrated into the company's operations.[85]

- Second, when evaluating whether the company's program is adequately resourced and

[79] *Initial Privacy Program Assessment Report* at 3.
[80] *Id.* at 10.
[81] *First Biennial Privacy Program Assessment Report* at 7.
[82] *2020 Order*, Section VII and VIII.
[83] *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, 2d. Ed. at 57.
[84] *Id.*
[85] *Evaluation of Corporate Compliance Programs,* U.S. Dept. of Justice at 2 (updated March 2023).

> empowered to function effectively, the company's culture of compliance, commitment by company leadership, tone-at-the-top, sufficiency of resources with adequate authority, and autonomy are among the elements to be considered.[86]

- Third, when evaluating whether the compliance program works in practice, a "strong indicator" is whether the program identifies issues and allows for "timely remediation and self-reporting."[87] Additionally, DOJ guidance refers to the "nature and thoroughness of the company's remedial efforts" and "whether the program evolved over time to address existing and changing compliance risks" as additional indicators of an effective program that works in practice.[88]

46. Below, I elaborate on examples of some of the key foundational elements of an effective program that Meta has implemented. These elements are consistent with the DOJ and other guidance described above and, based on my experience, are areas that are critically important to the long-term sustainability of an effective compliance program. These elements include management commitment to a culture of compliance, an adequately resourced and empowered privacy function, and monitoring and remediation.

iii. Management Commitment to a Culture of Compliance

47. Based on my background and experience, it is critical that senior management be committed to improving the compliance program, particularly in the initial stages.

48. The DOJ describes management commitment to a culture of compliance as a key element of an effective program:

> The effectiveness of a compliance program requires a high-level commitment by company leadership to implement a culture of compliance from the middle and the top.[89]
>
> An effective compliance program promotes "an organizational culture that encourages ethical conduct and a commitment to compliance with the law."[90]

49. Based on the Assessor's observations in its initial and first biennial reports and my review of publicly available information, Meta has demonstrated a significant level of commitment and dedication to designing and implementing the new Privacy Program and related Safeguards, all in

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[86] *Id.* at 9-11.
[87] *Id*. at 14-15.
[88] *Id*. at 15.
[89] *Id*. at 9.
[90] *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, 2d. Ed. at 56.

a very short time.

50. To illustrate, in the FTC's own words, the Order "impose[d] unprecedented new restrictions on Facebook's business operations," and provided for "sweeping conduct relief . . . unprecedented in the history of the FTC," with the intent of "chang[ing] Facebook's entire privacy culture to decrease the likelihood of continued violations."[91] In response to the Order, rather than update its existing privacy program, Meta created an entirely new program and comprehensively redesigned its privacy organizational structure, program materials, and Safeguards.[92] As such, Meta leadership took on the difficult task of creating an entirely new Privacy Program [redacted][93] Such efforts to make lasting compliance improvements are strong evidence of a company's commitment to work cooperatively with a third-party reviewer over time to strengthen its compliance program.

51. Revealingly, the Assessor acknowledged that Meta has embarked on a "more comprehensive and time-intensive approach."[94] In contrast, a company less interested in creating meaningful improvements would simply make quick fixes to its existing privacy program. Meta's ambitious efforts to improve should be acknowledged and encouraged.

52. The Company's more comprehensive approach to creating a new compliance program illustrates one of the trade-offs associated with pursuing long-term sustainability over short-term effectiveness. It demonstrates a high-level of commitment and dedication by Meta's leadership to implement a culture of compliance.

53. Various guidance also supports the conclusion that the most effective compliance programs go beyond a "check-the-box" exercise and do not just "exist on paper":

> In addition, compliance programs that do not just exist on paper but are followed in practice will inevitably uncover compliance weaknesses and require enhancements. Consequently, DOJ and SEC evaluate whether companies regularly review and improve their compliance programs and do not allow them to become stale.[95]

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[91] *FTC Imposes $5 Billion Penalty and Sweeping New Privacy Restrictions on Facebook, FTC Press Release* (Jul. 24, 2019), https://www.ftc.gov/news-events/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions (last visited Oct. 9, 2023).
[92] *Initial Privacy Program Assessment Report* at 2.
[93] *Id.* at 2.
[94] *First Biennial Privacy Program Assessment Report* at 6.
[95] *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, 2d. Ed. at 66.

54. Additionally, the Centre for Information Policy Leadership ("CIPL")[96] identified that going "beyond a one-moment-in-time checkbox compliance exercise" was a common trend among mature privacy programs when building and implementing effective data privacy practices.[97]

55. Furthermore, the Assessor reported many examples of Meta's commitment to a culture of compliance and extensive investment and dedication to enhancing its Privacy Program. For example, the Assessor's initial report acknowledged that Meta implemented certain Safeguards to enhance its culture of compliance, such as foundational annual and new hire trainings, which help to [redacted][98] The Assessor also reported that Meta "significantly expanded [its] privacy training program content and delivered enhanced training to more than [redacted] employees and associates by the date of our Assessment."[99] Meta's efforts regarding its training program have exceeded what was required, and these efforts further illustrate its commitment to a culture of compliance that goes beyond a "check-the-box" mentality.

56. The Assessor's initial report also discussed Meta's investment in its Privacy Program, for example by expanding the universe of privacy Safeguards from [redacted] to over [redacted] publishing more than [redacted] privacy governing documents and approximately [redacted] additional privacy-focused procedures; and implementing over [redacted] Safeguards throughout the initial assessment period.[100]

57. Based on my knowledge and experience, and consistent with authoritative guidance, Meta's program is expected to evolve and improve over time in response to the Assessor's initial observations. Therefore, I would expect to see further improvements and enhancements reported in the Assessor's first biennial report – and this is indeed exactly what I saw. The Assessor's first biennial report provides further instances of Meta's commitment to a culture of compliance and investment in its program. For example, the Assessor observed that "Meta has continued to push a privacy-first message from the top of company leadership," and acknowledged that the Company was "beginning to change the culture of compliance in the business."[101] The Assessor also observed that the Company [redacted][102] Further, the Assessor reported that Meta [redacted]

[96] "The Centre for Information Policy Leadership (CIPL) is a global privacy and data policy think and do tank based in Washington, D.C., Brussels, and London. CIPL works with industry leaders, regulatory authorities, and policy makers to develop global solutions and best practices for privacy and responsible use of data." CIPL Website, https://www.informationpolicycentre.com/about.html (last visited Oct. 9, 2023).
[97] *What Good and Effective Data Privacy Accountability Looks Like: Mapping Organisations' Practices to the CIPL Accountability Framework*, Centre for Information Policy Leadership at 4, 6 (May 2020).
[98] *Initial Privacy Program Assessment Report* at 167, 168.
[99] *Id.* at 2.
[100] *Id.* at 15.
[101] *First Biennial Privacy Program Assessment Report* at 7, 12.
[102] *Id.* at 13.

[redacted][103]

58. Meta's senior management also has demonstrated commitment to compliance through their words, including by disseminating clear company standards through their policies.

59. For example, since the FTC filed its Complaint in 2019 alleging that Meta violated the 2012 Order, Meta's CEO has articulated, conveyed, and disseminated his and the Company's enhanced commitment to a culture of privacy and compliance. The CEO has done so through communications and public statements that discuss his privacy-focused vision and principles. He has expressed support for the FTC's enforcement actions and his goal to "set a completely new standard for our industry" when it comes to protecting people's privacy:

> We have a responsibility to protect people's privacy. We already work hard to live up to this responsibility, but now we're going to set a completely new standard for our industry.[104]
>
> Our executives, including me, will have to certify that all of the work we oversee meets our privacy commitments.[105]
>
> Overall, these [FTC] changes go beyond anything required under US law today. The reason I support them is that I believe they will reduce the number of mistakes we make and help us deliver stronger privacy protections for everyone.[106]
>
> As we build our privacy-focused vision for the future of social networking that I outlined earlier this year, it's critical we get this right. The next focus for our company is to build privacy protections as strong as the best services we provide. I'm committed to doing this well and delivering the best private social platform for our community.[107]
>
> I'll outline our vision and principles around building a privacy-focused messaging and social networking platform. There's a lot to do here, and we're committed to working openly and consulting with experts across society as we develop this.[108]

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[103] *Id.* at 8, 13.
[104] Mark Zuckerberg, Facebook Post (Jul. 24, 2019), https://www.facebook.com/zuck/posts/pfbid0tqsYSgzo2Bxxg3RrchTkmQB5z36dhaeWMtVsSQCrn4vti4PGrz1Qnw35a8cwrxeQl?ref=embed_post (last visited Oct. 9, 2023).
[105] *Id.*
[106] *Id.*
[107] *Id.*
[108] Mark Zuckerberg, *A Privacy-Focused Vision for Social Networking*, Facebook (Mar. 12, 2021), https://www.facebook.com/notes/2420600258234172/ (last visited Oct. 9, 2023).

60. In addition, Meta has communicated its commitment to compliance through its Code of Conduct policy, which it describes as "built on our principles, which are beliefs that we hold deeply and represent what we stand for. They help guide how we make decisions every day."[109] The Code of Conduct includes a commitment to privacy as one of its five foundational principles: "Keep people safe and protect privacy."[110]

61. The Company's statements reflect commitment to enhancing its Privacy Program and fostering a culture of compliance, which in my experience are critical for supporting an effective and sustainable program.

iv. The Company's Privacy Program is Adequately Resourced and Empowered to Function Effectively

62. Of fundamental importance to demonstrating commitment to a culture of compliance, Meta has made senior management responsible for its success. Meta has also devoted considerable additional resources to its Privacy Program, as discussed below. The significance of these actions cannot be overstated.

63. Based on my background and experience, the effectiveness and success of a compliance program depends on the adequacy and authority of the program structure and resources. Even a well-designed compliance program may be unsuccessful in practice if implementation is lax, under-resourced, or otherwise inadequate.[111]

64. The DOJ describes how programs must be adequately resourced and empowered to function effectively:

> Effective implementation also requires those charged with a compliance program's day-to-day oversight to act with adequate authority and stature. As a threshold matter, prosecutors should evaluate how the compliance program is structured. Additionally, prosecutors should address the sufficiency of the personnel and resources within the compliance function, in particular, whether those responsible for compliance have: (1) sufficient seniority within the organization; (2) sufficient resources, namely, staff to effectively undertake the requisite auditing, documentation, and analysis; and (3) sufficient autonomy from management, such as direct access to the board of directors or the board's audit committee.[112]

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[109] *Keep Building Better: The Meta Code of Conduct*, https://s21.q4cdn.com/399680738/files/doc_downloads/governance_documents/2022/09/new/Meta-Code-of-Conduct-(1).pdf (last visited Oct. 9, 2023).
[110] *Id.*
[111] *Evaluation of Corporate Compliance Programs,* U.S. Dept. of Justice at 9 (updated March 2023).
[112] *Id*. at 10.

> Prosecutors should also evaluate "[t]he resources the company has dedicated to compliance," "[t]he quality and experience of the personnel involved in compliance, such that they can understand and identify the transactions and activities that pose a potential risk," and "[t]he authority and independence of the compliance function and the availability of compliance expertise to the board."[113]

65. The Assessor's observations illustrate that Meta has made extensive investment in the expansion of Privacy Program resources, including personnel who are empowered based on access and availability of expertise to the Board. The Assessor provides various examples of Meta's significant investment in resources and efforts to enhance the privacy function in the Assessor's initial report. For example, Meta grew its "privacy-dedicated headcount from approximately [redacted] employees as of mid-2019 to more than [redacted] employees as of the date of [the initial] [a]ssessment, with budget-approved plans to add an additional [redacted] resources by 2021 year-end."[114] Additionally, Meta "[c]reated a dedicated Privacy Review function staffed by more than [redacted] and supporting technology infrastructure to conduct independent assessments of the privacy risks posed by new or modified products, services, or practices."[115]

66. The Assessor's initial report also provides evidence that the privacy function was empowered with "sufficient seniority within the organization" and "sufficient autonomy from management, such as direct access to the board of directors or the board's audit committee."[116] For example, Meta "[e]stablished dedicated privacy oversight and governance functions at both the Board of Directors and senior management committee levels."[117] Meta also appointed a Designated Compliance Officer, Chief Privacy Officer-Product (DCO) who coordinates, and is responsible for, the Mandated Privacy Program.[118] The DCO was assigned responsibility [redacted] and for making required certifications to the FTC and DOJ.[119]

67. In addition to the expansion of resources and empowering its privacy function, Meta also enhanced the governance function of the Privacy Program. For example, the Assessor's initial report states that Meta redesigned its Privacy Program management structure [redacted] "based on input from multiple outside experts, [redacted][120] Additionally, Meta "developed and implemented a Privacy Governance and Accountability Structure comprising the teams and roles that are critical to the ongoing documentation,

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[113] *Id.*
[114] *Initial Privacy Program Assessment Report* at 2.
[115] *Id.*
[116] *Evaluation of Corporate Compliance Programs,* U.S. Dept. of Justice at 10 (updated March 2023).
[117] *Initial Privacy Program Assessment Report* at 2.
[118] *Id.* at 163.
[119] *Id.*
[120] *Id*. at 2.

implementation, monitoring and maintenance of the Mandated Privacy Program," and "established a cross functional oversight body (i.e., Privacy Leads Cross Functional (XFN) Committee)."[121]

68. Meta further enhanced the structure and strength of its privacy function program resources and governance functions as described in the Assessor's first biennial report:

> Meta has continued to increase the total number of resources dedicated to the MPP even as the Company reduced total staffing levels beginning in late 2022. The overall Privacy and Data Practices Organization, which is led by the Chief Privacy Officer-Product and is directly responsible for implementing and maintaining the MPP, [redacted][122]
>
> New governance functions have been added [redacted] to further define and clarify accountabilities. [redacted][123]

69. The Company has demonstrated that it significantly enhanced the structure and strength of its Privacy Program by appointing senior management with seniority within the Company and expanding resources dedicated to the Privacy Program, which is critical to the effective implementation and maintenance of the Privacy Program.

v. Monitoring and Remediation

70. As further discussed in Opinion B, the Company's capacity to remediate gaps and weaknesses is a strong indicator of effectiveness and provides insight into the strength and

[121] *Id*. at 20.
[122] *First Biennial Privacy Program Assessment Report* at 7.
[123] *Id.* at 7.

sustainability of the program. As noted below, because there will always be gaps as a program evolves and adapts to changes, the Company's ability to timely respond and adapt its program is critical to the long-term success of the program.

71. The DOJ describes that programs must be periodically evaluated and remediated to improve and evolve to be effective:

> [A] hallmark of a compliance program that is working effectively in practice is the extent to which a company is able to conduct a thoughtful root cause analysis of misconduct and timely and appropriately remediate to address the root causes.[124]
>
> Of course, if a compliance program did effectively identify misconduct, including allowing for timely remediation and self-reporting, a prosecutor should view the occurrence as a strong indicator that the compliance program was working effectively.[125]

72. The Assessor's initial report communicates that the Company had already started responding to the Assessor's recommendations by incorporating feedback and remediating gaps and weaknesses during the initial assessment period. For example, the Assessor described the Company's remediation efforts across various control domains, including Risk Assessments and Remediation; Third Party Risk Management ("TPRM") and Transparency, Notice and Choice:

[redacted][126]

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[redacted][127]

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[redacted]

[124] *Evaluation of Corporate Compliance Programs,* U.S. Dept. of Justice at 18 (updated March 2023).
[125] *Id.* at 14-15.
[126] *Initial Privacy Program Assessment Report* at 49 (emphasis added).
[127] *Id.* at 150.

[redacted][128]

73. Based on my experience, a company's willingness to proactively "self-identify" problems is a hallmark of a culture of compliance. Based on the record, Meta has continued to do so, by identifying opportunities for improvement and demonstrating its commitment to remediation, as reflected in the Assessor's first biennial report. For example, the Assessor reported that "Meta implemented [redacted] Management Action Plans (MAPs) to remediate Gaps and Weaknesses (hereafter Gaps), including [redacted] identified during the Current Assessment Period, and to make improvements that were self-identified by Meta. Meta's leadership has committed to continue addressing all Assessor identified Gaps leveraging the MAPs process."[129]

74. Furthermore, the Assessor's first biennial report illustrates the significant progress and program improvements that resulted from Meta's remediation efforts. For example, the Assessor noted that "[o]ver the past two years, Meta has continued to make significant investments in the MPP, and the effectiveness and maturity of the control environment has notably improved based on our Assessment results reported herein."[130] The Assessor also reported "substantial progress to address previously identified Gaps by taking a holistic and strategic approach to address the root cause of the previously identified issues;"[131] "improvement in the maturity of the program across [redacted] based on "the actions noted above, as well as MAPs executed throughout the period;"[132] and "progress" in "addressing the most critical operational Gaps identified in the Initial Assessment."[133] Further, with regards to the [redacted] "most significant"[134] gaps identified in the Assessor's initial report, the Assessor noted that [redacted][135] observed [redacted][136] and concluded that [redacted][137]

75. In addition, the Assessor's first biennial report stated that the Company *self-identified* a number of gaps and had already remediated many of them. This action further demonstrates the Company's dedication and commitment to a culture of compliance, effective monitoring, and remediation, which is evidence that Meta's Privacy Program has continued to improve and evolve. For example:

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[128] *Id.* at 131.
[129] *First Biennial Privacy Program Assessment Report* at 6.
[130] *Id.* at 7.
[131] *Id.* at 9.
[132] *Id.* at 8.
[133] *Id.* at 12.
[134] *Id.* at 10.
[135] *Id.* at 11.
[136] *Id.*
[137] *Id.* at 12.

- Meta self-identified an issue within the "Security for Privacy" domain on [redacted][138]
- Meta self-identified another issue within the "Security for Privacy" domain and the Assessor reported that, [redacted][139]
- As part of the efforts to remediate issues within the Data Lifecycle Management domain, [redacted][140]

76. Based on my experience in implementing, overseeing, and evaluating compliance programs, and based on the Assessor's own conclusions in the first two reports, the Company has established a comprehensive Privacy Program, and the Company had key foundational elements of an effective program in place at the time of the Assessor's initial report, which contradicts the FTC's conclusions. Meta has made significant progress in continuing to enhance its Privacy Program. As described below in Opinion B, the evaluation of the effectiveness of a program is an ongoing process. Based on the accepted principles described above, the FTC should allow Meta's Privacy Program to mature and evolve before deciding whether the program is ineffective.

B. Compliance Improvements Must Be Allowed to *Evolve Over Time*, and the FTC's Order to Show Cause Makes Premature and Inaccurate Conclusions About Meta's Privacy Program.

77. Compliance improvements must be allowed to evolve over time. That process is a give-and-take one that, in my experience, is expected to take years, through a collaborative relationship of trust with the monitor/assessor. Allowing compliance improvements to evolve over time is essential to creating a culture of compliance.

78. Ignoring this reality, the FTC has jumped to premature and erroneous conclusions that are inconsistent with the Assessor's findings. The FTC's Order to Show Cause concludes that the Company "failed to establish and implement an effective privacy program mandated by Part VII of the 2020 Order" and concluded "the gaps and weaknesses noted within our review demonstrate that substantial additional work is required, and additional investments must be made, in order for the program to mature [redacted][141]

79. As noted above, the Independent Privacy Program Assessment is a twenty-year

[138] *Id.* at 145.
[139] *Id.* at 146.
[140] *Id.* at 306.
[141] *2023 Order to Show Cause* at 4, 12 (emphasis original).

undertaking by the Company, the Assessor, and the FTC. At the time of the Assessor's initial report, only six months of the twenty-year term had passed.

80. The 2020 Order provides various requirements that must be completed by the time of the Assessor's initial report (i.e., within 180 days), including the implementation of a comprehensive privacy program and an assessment of the effectiveness of certain components of the program.[142] As described above, based on the Assessor's findings and my review of the Assessor's report, Meta implemented a comprehensive Privacy Program with key foundational elements in place. However, the Order does *not* require a final conclusion regarding the overall effectiveness of the program or its Safeguards.

81. Similarly, it is premature for the government to draw conclusions about the program's overall effectiveness from a first report like the Assessor's initial assessment after only six months of a twenty-year term. Indeed, such broad conclusions about the program's overall effectiveness do not appear to be justified under the terms of the 2020 Order. Instead, the FTC should treat such an initial report as precisely that—an opportunity to identify areas for improvement in this multi-year process. Commentators support this concept regarding the purpose of a monitor's first report. For example, one commentator noted that, "[i]n some cases, the first report will provide a high-level overview of the monitor's initial impressions, but *monitors should be wary about drawing or suggesting any early conclusions*. It will often be six months to a year (or even longer) before a monitor can make reasonable judgements about the monitored party's approach to compliance – and even those assessments are provisional."[143]

82. One cannot judge the overall effectiveness of a compliance program based on the first six months of a twenty-year term. Rather, the evaluation of a compliance program is a fact-intensive inquiry that requires data points over a prolonged period of time, not simply six months.

83. Furthermore, based on my experience, neither the FTC nor the Assessor should expect everything to be completed by the initial review. The Assessor itself recognized this point. Additional time is needed to evaluate Meta's efforts to remediate its new Privacy Program.[144] In this multi-year process, the Assessor must consider the ongoing progress made, and the Company's commitment to implementing an effective compliance program.

84. For example, during my role as Independent Compliance Monitor and Auditor at VW, I was required to issue my first written report within 150 calendar days of commencing my initial review, and was required to set forth my assessment and make recommendations reasonably

[142] *2020 Order*, Sections VII and VIII.
[143] Thomas J. Perrelli, *The Life Cycle of a Monitorship, Global Investigations Review, The Guide to Monitorships,* 3d. Ed., April 25, 2022, https://globalinvestigationsreview.com/guide/the-guide-monitorships/third-edition/article/the-life-cycle-of-monitorship (last visited September 28, 2023).
[144] *Initial Privacy Program Assessment Report* at 2; *First Biennial Privacy Program Assessment Report* at 10, 13.

designed to improve the effectiveness of VW's program.[145] Further, VW was required to implement my recommendations within 150 days of my written report, unless considered unduly burdensome, inconsistent with applicable law or regulation, impractical, excessively expensive, or otherwise inadvisable.[146]

85. The recommendations in my first report were intended to provide an overview of VW's remediation activities to date and to begin to identify areas where VW could make improvements to the compliance program remediation efforts, as well as prioritize other activities VW had not yet started.

86. While my initial review reported recommendations on the design of the program, I was expected to and continued to make recommendations for enhancements over the term of the Monitorship. This was an iterative and ongoing process, based on a series of my recommendations and VW's responses, which took place over the three-year term. I would never have expected VW to have completed the implementation of an effective compliance program so quickly in six months.

87. As described in the VW Plea Agreement, it was only after the initial report, first follow up report, and second follow up report were completed, which occurred over a period of more than three years, that I was to "certify whether [VW's] compliance program, including its policies and procedures, [was] reasonably designed and implemented to prevent and detect violations of the anti-fraud and environmental laws."[147]

88. The FTC's premature conclusions on the overall effectiveness of Meta's Privacy Program are inconsistent with the long-standing principles that compliance programs must be allowed to evolve over time.

89. These principles are well-established. All good compliance programs should constantly improve, evolve, and mature *over time*. Various authoritative guidance supports this concept of constant evolution of compliance programs of all types. For example:

> . . . [A] good compliance program should constantly evolve. A company's business changes over time, as do the environments in which it operates, the nature of its customers, the laws that govern its actions, and the standards of its industry.[148]
>
> One hallmark of an effective compliance program is its capacity to improve and

[145] *Rule 11 Plea Agreement*, *United States v. Volkswagen AG*, No. 16-CR-20394, ECF No. 68 at 73-86 (Exh. 3 Independent Compliance Monitor)(E.D. Mich, Mar. 10, 2017).
[146] *Id.*
[147] *Id.* at Exh. 3-11.
[148] *A Resource Guide to the U.S. Foreign Corrupt Practices Act,* 2d. Ed. at 66.

> evolve.[149]
>
> . . . [e]ven the most mature [programs] have to undergo constant and ongoing adaptation and improvements.[150]

90. Because this process of constant evolution and improvement takes time, companies are expected to regularly monitor, review, and test their compliance program to identify areas of improvement and adapt their programs to new and changing risks. For example, the DOJ's ECCP policy dedicates an entire section to "Continuous Improvement, Periodic Testing, and Review."[151]

91. In fact, as part of this process, finding gaps and weaknesses is both expected and desired, because that is what occurs when a compliance program is working effectively. On the other hand, if the Assessor did *not* identify any gaps associated with Meta's Privacy Program, that fact might suggest that the Assessor did not conduct an adequate assessment, or that Meta was not being transparent or had implemented quick fixes at the expense of long-term sustainability.

92. Moreover, the *absence* of gaps or weaknesses may raise concerns regarding the adequacy of the program. For example, federal guidance applicable to the Commodity Futures Trading Commission and addressing Chief Compliance Officers (CCO) recognizes this principle:

> In general, identifying areas in need of improvement and recommending steps to effect those improvements should be a core function of compliance. Accordingly, a CCO Annual Report that makes no recommendations for changes or improvements to the compliance program may raise concerns about the adequacy of the compliance program review intended by the CCO Annual Report process.[152]

93. Thus, even mature compliance programs are expected to have gaps, which should be considered opportunities to improve and to foster positive change, rather than to conclude it is ineffective.

94. Gaps will always exist, due to changes in internal and external factors, laws and regulations, technology, and new and evolving risks. In fact, the 2020 Order itself recognizes that

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[149] *Evaluation of Corporate Compliance Programs*, U.S. Dept. of Justice at 15 (updated March 2023), https://www.justice.gov/opa/speech/file/1571911/download (last visited Oct. 9, 2023).
[150] "*What Good and Effective Data Privacy Accountability Looks Like: Mapping Organisations' Practices to the CIPL Accountability Framework,*" Centre for Information Policy Leadership at 6 (May 2020), https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cipl_accountability_mapping_report__27_may_2020__v2.0.pdf (last visited Oct. 9, 2023).
[151] *Evaluation of Corporate Compliance Programs,* U.S. Dept. of Justice at 15 (updated March 2023).
[152] 17 C.F.R. Appendix C to Part 3 (Guidance on the Application of § 3.3(e), Chief Compliance Officer Annual Report).

there will be gaps and weaknesses identified as part of the Assessor's ongoing reviews,[153] yet does not equate this to ineffectiveness.[154]

95. These established principles show the error in the FTC's approach. While the FTC states that "the most serious deficiencies and sheer number of total gaps and weaknesses" identified by the Assessor "present substantial risks to the public,"[155] the gaps and weaknesses identified in the Assessor's initial report are *precisely what is to be expected* for a company as large and complex as Meta, in the infancy stages of developing its new Privacy Program. That is especially true given that the FTC has described as "unprecedented" the existing restrictions agreed to by Meta in 2019.[156] And, Meta has continued to remediate its program in response to the Assessor's observations and feedback, as is noted in both the initial and first biennial Assessor reports.

96. Again, as discussed in Opinion A above, Meta chose the more ambitious but difficult course by comprehensively redesigning its Privacy Program from the ground up, rather than renovating the existing one.[157] By embarking on this multi-year process necessary to create a more effective and sustainable program *over the long term*, Meta assured that the Assessor would identify gaps and weaknesses along the way. As mentioned previously, the DOJ ECCP states that "one hallmark of an effective compliance program is its capacity to improve and evolve."[158] The improvements implemented will naturally result in the identification and remediation of gaps and weaknesses.

97. Moreover, no compliance program can prevent all problems. DOJ guidance reiterates that the "existence of misconduct does not, by itself, mean that a compliance program did not work or was ineffective at the time of the offense."[159] Based on my experience in the DOJ, in advising private clients on corporate compliance matters, and in serving as the VW Monitor and Auditor, even the most effective compliance programs cannot prevent all problems. For that reason, regulators and enforcement officials do not expect perfection from an effective compliance

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[153] The 2020 Order states that "[e]ach Assessment must . . . (3) identify any gaps or weaknesses in the Privacy Program."*2020 Order*, Section VIII.D at 13.

[154] Illustrating how changes to compliance programs must be allowed to evolve over time, in *United States v. Siemens Aktiengesellschaft*, Case 1:08-cr-00367-RJL (D.D.C. 2008), Siemens entered a plea agreement that required a four-year corporate monitorship due to FCPA violations. The Monitor identified over 150 recommendations in over a dozen topic areas. Ultimately, the Monitor confirmed that "all of the recommendations had been fully implemented" and at the end of the four-year term, certified that "Siemens' compliance program is reasonably designed and implemented to detect and prevent violations within Siemens of anti-corruption laws . . . ."

[155] *2023 Order to Show Cause* at 4.

[156] *FTC Imposes $5 Billion Penalty and Sweeping New Privacy Restrictions on Facebook, FTC Press Release* (Jul. 24, 2019), https://www.ftc.gov/news-events/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions (last visited Oct. 9, 2023).

[157] *Initial Privacy Program Assessment Report* at 2.

[158] *Evaluation of Corporate Compliance Programs*, U.S. Dept. of Justice at 15 (updated March 2023), https://www.justice.gov/opa/speech/file/1571911/download (last visited Oct. 9, 2023).

[159] *Id.* at 14. Significantly, while this quote refers to "criminal activity," we recognize that Meta has not been accused of criminal activity in this matter. Indeed, if the DOJ believes that compliance programs cannot prevent all criminal activity, the same conclusion would apply to any violation of privacy rules.

program.

98. Further demonstrating this principle, the DOJ ECCP states that the government may credit the quality and effectiveness of a risk-based compliance program that devotes appropriate attention and resources to high-risk transactions, *even if it fails to prevent an infraction*. DOJ guidance also states that "a company's failure to prevent every single violation does not necessarily mean that a particular company's compliance program was not generally effective." DOJ here restates that companies are not held "to a standard of perfection."[160]

99. With this reality in mind, it follows that the FTC has made *premature and inaccurate* conclusions by attempting so early to judge Meta's Privacy Program. This new program, to be refined on an ongoing basis in collaboration with the Assessor during the twenty-year assessment period, is by definition a "work in progress." That was certainly my experience in the VW monitorship, over the approximately three-year term. That is also true with regard to Meta's new Privacy Program, to be assessed, adjusted, and improved over twenty years.

100. In fact, the FTC unintentionally supports this conclusion by citing the Assessor's comments that "additional work is required," and that "additional investments" are required "in order for the program to mature" and to [redacted][161] In those comments, the Assessor has described *precisely what is expected as a new program evolves*.

101. Similar support appears in the Assessor's initial report. The Assessor itself recognized that the deadlines imposed under the Order resulted in [redacted][162] [redacted][163]

102. Based on these principles, the Assessor should continue to collaborate with Meta in enhancing its Privacy Program under the terms of the existing 2020 Order. As time progresses, the Company should continue to identify opportunities for enhancements, and the Assessor will continue to monitor the enhancements as part of its existing responsibilities during the twenty-year period of the 2020 Order.[164]

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[160] *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, 2d. Ed. at 57.
[161] *2023 Order to Show Cause* at 4.
[162] *Initial Privacy Program Assessment Report* at 2.
[163] *First Biennial Privacy Program Assessment Report* at 10, 13.
[164] *2020 Order*, Section VII.F at 12. For example, Section VII.F of the 2020 Order requires Meta to monitor and test its compliance program to identify gaps and areas for improvement and iteratively assess controls for their effectiveness in mitigating risks. As described above – as part of this process – the Company will identify areas for improvement and take necessary actions to remediate deficiencies identified in a timely manner. The Assessor will also continue to evaluate the Company's remediation efforts, its commitment to implementing the program, and the overall improvement of the program throughout the assessment period. *Id.*

103. In sum, the FTC's conclusions about the program are premature and inaccurate, particularly so early in this multi-year process. As discussed below, drawing such premature conclusions is one way that the FTC's approach threatens to undermine the collaborative, remedial relationship needed for the Company's long-term remediation efforts of its Privacy Program.

C. To Promote Lasting Change, Independent Third-Party Reviews Must be Remedial, Not Punitive, and the FTC's 2023 Proposed Decision and Order Takes a Punitive Approach that Violates this Principle.

104. Again, the role of a monitor or independent third-party reviewer is to assess and monitor a company's compliance with an agreement resulting from an enforcement action. As such, monitors/assessors may recommend actions that the company disagrees with or dislikes. Despite occasional disagreements, effective monitors/assessors continue to work cooperatively with the company to help strengthen its compliance program to prevent future misconduct.

105. Here, the FTC itself has acknowledged in 2019 that the primary purpose of its "unprecedented" settlement with Meta was to reduce the risk of continued violations. Specifically, the FTC stated that "[t]he relief is designed not only to punish future violations but, more importantly, to change Facebook's entire privacy culture to *decrease the likelihood of continued violations*."[165] Consistent with the "remedial" role of a monitor or independent reviewer, the FTC also stated that its settlement with Meta "strengthens external oversight of Facebook. The order enhances the independent third-party assessor's ability to *evaluate the effectiveness of Facebook's privacy program and identify any gaps*."[166]

106. Many authorities have observed that, for a monitor to be effective in helping create a culture of compliance in an organization, a "remedial" approach is required. In contrast, a "punitive" approach undermines the possibility of creating lasting change in the organization.

107. In DOJ's foundational 2008 memorandum by Acting Deputy Attorney General Craig S. Morford, DOJ recited the principle that "[a] monitor's primary responsibility is to assess and monitor a corporation's compliance with the terms of the agreement specifically designed to address and reduce the risk of recurrence of the corporation's misconduct, *and not to further punitive goals.*"[167]

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[165] *FTC Imposes $5 Billion Penalty and Sweeping New Privacy Restrictions on Facebook, FTC Press Release* (Jul. 24, 2019), https://www.ftc.gov/news-events/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions (last visited Oct. 9, 2023) (emphasis added).

[166] *Id.* (emphasis added).

[167] Memorandum from Craig S. Morford, Acting Deputy Att'y Gen., *Selection and Use of Monitors in Deferred Prosecution Agreements and Non-Prosecution Agreements with Corporations* at 2 (Mar. 7, 2008)(emphasis added), https://www.justice.gov/sites/default/files/dag/legacy/2008/03/20/morford-useofmonitorsmemo-03072008.pdf (last visited Oct. 9, 2023).

108. Similarly, former U.S. Attorney for the Southern District of New York, Geoffrey S. Berman, described the importance of the monitor's *remedial* role:

> . . . a monitor's primary responsibility is to assess and monitor the entity's compliance with the terms of the agreement that resolved the case. The specific goal is to reduce the risk of recurrence; *in other words, a monitor's role is remedial, not punitive*.[168]

109. Further, the DOJ and the SEC resource guide discussed above has agreed with this approach:

> The most successful monitoring relationships are those in which the company embraces the monitor or consultant. If the company takes the recommendations and suggestions seriously and uses the monitoring period as a time to find and fix any outstanding compliance issues, the company can emerge from the monitorship with a stronger, long-lasting compliance program.[169]

110. To be a catalyst for long-term, meaningful reform at a company, an independent third-party reviewer such as the Assessor must take a remedial approach with a company, not a punitive one. In this remedial role, a stronger, long-lasting program will emerge if the company and independent third-party reviewer build a relationship of open communication, transparency, trust, and collaboration.

111. Consistent with this federal guidance, various scholars and commentators support this concept. They agree that a trusting and collaborative "partnership" among the monitor, the company, and the government increases transparency and encourages decisions that support a stronger, more sustainable compliance program. For example:

> By encouraging the monitor, corporation, and government to work together, the corporation becomes a partner to the monitor in the efforts to achieve greater compliance. Instead of framing the monitor as an adversary to be bested, the monitor is framed as a partner with whom to cooperate to achieve a better long-term outcome for the corporation.[170]

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[168] Geoffrey S. Berman, U.S. Attorney Geoffrey Berman Keynote Speech on Monitorships at 4 (Oct. 12, 2018) (emphasis added), https://wp.nyu.edu/compliance_enforcement/2018/10/12/u-s-attorney-geoffrey-berman-keynote-speech-on-monitorships/ (last visited Oct. 9, 2023).
[169] *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, 2d. Ed. at 74.
[170] Veronica Root, *The Monitor - "Client" Relationship*, 100 Va. L. Rev. at 523, 554–55 (2014)(discussing sources supporting the remedial approach to monitorships).

112. Another commentator with experience in monitorships supports this principle:

> To an even greater degree than for monitorships focused on enforcement, corporate compliance *monitorships are not 'gotchas.'* Although it is essential to understand past bad behaviour to determine the root cause, the corporate compliance *monitor must be forward-looking*.[171]

113. With such a cooperative relationship, the Assessor is most effective by providing input to the company, which in turn implements changes and improves its program. As the company implements these changes and improvements, further gaps and weaknesses will be identified, which in turn leads to additional improvements. Throughout this process, the third-party reviewer should support a deep and demanding – yet flexible and open-ended – reform process. This remedial process must evolve over time to help the company create a culture of compliance.

114. These principles proved true when I served as VW's Independent Compliance Monitor and Auditor. VW recognized the meaningful change that occurred across the organization and the value that my team was providing as Monitor to VW:

> . . . during the VW monitorship, the company asked for additional time to demonstrate that it had met certain remediation requirements, and, in doing so, it stated that the monitor "*ha[d] been an important catalyst for change*" at the firm.[172]

115. Based on my experience, a punitive approach is not only inconsistent with a monitor's intended remedial role, but will also likely result in an adversarial relationship with the company. This is damaging to the monitorship and will likely hinder the development and implementation of a strong and sustainable compliance program.

116. To further elaborate, a punitive approach is likely to undermine the relationship of trust between the independent third-party reviewer and the company. Based on my background and experience I have seen firsthand that a lack of trust by the company being monitored results in less transparency and a reluctance to share information, in fear that the monitor or government will impose punitive measures or play a "gotcha" game.

117. For those reasons, a punitive approach and the resulting lack of trust tends to disincentivize companies from implementing significant and foundational changes, in favor of

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[171] Bart M. Schwartz, *When do Enforcement Agencies Decide to Appoint a Monitor?*, Global Investigations Review, The Guide to Monitorships, 3d. Ed. (Apr. 25, 2022)(emphasis added), https://globalinvestigationsreview.com/guide/the-guide-monitorships/third-edition/article/when-do-enforcement-agencies-decide-appoint-monitor#footnote-031-backlink (last visited Aug. 11, 2023).

[172] Veronica Root Martinez, *Public Reporting of Monitorship Outcomes*, 136 Harv. L. Rev. at 757, 816 (2023) citing Press Release, Volkswagen AG, Volkswagen AG Granted More Time to Test Compliance Programs Under Its U.S. Monitorship (Oct. 17, 2019)(emphasis added).

short-term "safer" changes, which are less likely to yield findings, gaps, or weaknesses. In other words, a company facing a punitive approach, rather than a remedial one, may choose short-term effectiveness at the expense of long-term meaningful and sustainable change.

118. Additionally, a punitive and adversarial monitoring approach has been demonstrated to decrease compliance. As one commentator described:

> " . . . [A]ggressive compliance monitoring can have an unfavorable effect on the motivation of agents to comply with rules." Thus, a highly monitored employee "regard[s] supervision as unreasonably pervasive and intrusive." *This can lead to the development of "an adversarial attitude toward the company, its supervisors, and the rules themselves."* Employees "may come to attribute their own compliance as motivated by coercion, rather than by their own desire to act properly." "*When this perception emerges, the result ultimately may be lower rates of compliance than would exist in the absence of close monitoring and visible penalties."* Analogizing these findings to the monitorship context helps to explain why it is *important to encourage a cooperative relationship among the monitor, corporation, and government.*[173]

119. Applying those established principles to this case, the FTC's proposed "punitive" approach is both counterproductive and unnecessary. The FTC's self-described, "unprecedented" enforcement efforts under the 2020 Order have laid a solid foundation of demanding restrictions. And, as mentioned above, Meta has expressed and demonstrated its support for and commitment to implementing those changes.

120. Based on the Assessor's reports to date, the Assessor has *already* begun to play a valuable remedial role, in a cooperative effort with Meta. As noted, the Assessor has acknowledged Meta's significant dedication of time, cooperation, flexibility, access, and transparency throughout the assessment periods. Furthermore, as described in Opinion A, the Assessor has described the meaningful reform and positive changes that are already occurring due to the Company's remediation efforts in response to the Assessor's findings. This further demonstrates the value of an independent third-party reviewer *operating cooperatively as intended*.

121. In the 2020 Order, the FTC entered this agreement with Meta in good faith with the intent of "chang[ing] Facebook's entire privacy culture to decrease the likelihood of continued violations."[174] If the Assessor continues to function as intended, based on a collaborative and trusting relationship with the Company, Meta is undoubtedly likely to establish a mature privacy

[173] Veronica Root, *The Monitor -"Client" Relationship*, 100 Va. L. Rev. at 523, 554–55 (2014) (emphasis added).
[174] *FTC Imposes $5 Billion Penalty and Sweeping New Privacy Restrictions on Facebook, FTC Press Release* (Jul. 24, 2019), https://www.ftc.gov/news-events/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions (last visited Oct. 9, 2023).

program that is sustainable over the long term.

122. However, the FTC's expectations regarding the maturity of Meta's Privacy Program, particularly after such a limited period of time, are not realistic. In fact, based on my experience, they are not supported in practice. The FTC's Proposed Decision and Order could undermine that cooperative effort and potentially put the Assessor at odds with Meta. Both lessen the chances for creating a culture of compliance.

123. As discussed above, the FTC's punitive approach with the 2023 Order to Show Cause hurts compliance efforts in many ways, because it:

- Undermines the Company's significant efforts under the 2020 Order and its decisions to invest in meaningful and sustainable change, rather than short-term fixes;
- Sets a precedent that program gaps and weaknesses result in punitive consequences, rather than opportunities to improve and evolve the program;
- Creates a fear of failure and disincentivizes the Company from making innovative and comprehensive program changes –in favor of developing "check the box" or "paper programs" that will likely result in fewer gaps and weaknesses;
- Results in an adversarial relationship that undercuts the relationship of trust with the Company and decreases the level of transparency between the Assessor, the Company, and the government; and
- Lowers rates of compliance.

124. In short, the FTC's Proposed Decision and Order reflects a punitive approach that is counterproductive and flatly inconsistent with the purpose of the Assessor and with monitorships more broadly. If the Assessor functions as intended – in a remedial role that supports a collaborative and trusting relationship with the Company – Meta is empowered to establish a mature privacy program that is sustainable over the long term.

D. The Punitive Approach Taken in the FTC's 2023 Proposed Decision and Order Will *Likely Discourage Other Companies* From Agreeing to an Independent Third-Party Review, From Making Comprehensive Improvements in Compliance, and From Engaging in Productive and Collaborative Relationships with Independent Third-Party Reviewers.

125. Separately, there is a clear "moral hazard" to the FTC's punitive approach. As discussed above, a punitive and adversarial approach can also cause harm broader than this single case. A punitive approach sets a bad example that tends to deter other companies from even agreeing to a monitorship or an independent third-party review. It also tends to dissuade other companies from implementing lasting improvements to their compliance programs, or from engaging in a productive and collaborative relationship with independent third-party reviewers.

126. To illustrate, in general companies already fear the imposition of a monitor and believe that a monitor will be overly intrusive in their businesses. As one commentator noted, "[m]any of our interviewees also observed that 'nobody wants a monitor,' effectively because of the disruption they represent to business operations."[175]

127. The FTC's premature and punitive actions now proposed will exacerbate those fears among companies generally, and will have these unintended negative consequences in future cases.

128. As noted, traditionally the government does not conclude that an agreement has been breached based on a monitor's initial assessment. In fact, based on my experience, while I can't rule out that such an imprudent result did in fact happen, I'm not aware of any situation in which the government determined there was a breach after the monitor's first report. Such an approach is counterproductive and especially unwarranted here, since the Assessor has concluded that the program is comprehensive, that the key foundational elements of an effective program are in place, that Meta has made "extensive investments in its privacy program," and that Meta has demonstrated significant cooperation and time.[176] As discussed above, this type of conclusion regarding the overall effectiveness of a company's program based solely on an initial assessment not only undermines the relationship of trust with the Monitor, but is also premature based on the evolving nature of the compliance program over time. Should the 2020 Order be modified as proposed by the FTC, other companies will see the government's abandonment of the traditional cooperative and remedial approach and will tend to resist agreeing to a monitorship or from entering into similar settlement agreements. That ripple effect would damage an "important tool in the arsenal of law enforcement authorities."[177] As Former U.S. Attorney Geoffrey S. Berman recognized, "[p]erhaps the greatest fear that hangs up entities deciding to accept a monitorship is that they will be trapped in that relationship for years, if not decades."[178]

129. The public loses if companies are discouraged from agreeing to independent third-party reviews like this one. This moral hazard will limit the broader benefits that monitorships and independent third-party reviews can provide to the public, regulatory bodies, and the government. As a leading commentator described, monitorships have numerous benefits and can be a "powerful mechanism" for providing information to interested parties including the monitored organization, courts, regulators, prosecutors, and the public.[179] They also provide a "tangible service to the public" by helping to "reassure[] the public and the government that the organization is engaged

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[175] Cristie Ford & David Hess, *Can Corporate Monitorships Improve Corporate Compliance?,* 34 J. Corp. L. at 703 (2009).
[176] Protiviti, *Initial Privacy Program Assessment Report* at 2, 3, 5 (Jun. 21, 2021).
[177] Thomas J. Perrelli, *The Life Cycle of a Monitorship, Global Investigations Review, The Guide to Monitorships,* 3d. Ed. at xiii *(*April 25, 2022).
[178] *U.S. Attorney Geoffrey Berman Keynote Speech on Monitorships* at 10 (2018).
[179] Veronica Root, *Modern-Day Monitorships*, 33 Yale J. on Reg. at 112 (2016).

in efforts that will ensure similar misconduct does not reoccur."[180]

130. As another example, monitorships and independent third-party reviews can provide a benefit to the government by facilitating "a better resolution than if the government maintained its exclusive posture over a company engaged in a remediation effort."[181] This commentator further explained that "the monitor's ability to *connect diverse networks of people* with an interest in the monitored firm's successful remediation of past misconduct makes her *uniquely situated* to encourage cooperation amongst all relevant parties to the monitorship."[182]

131. In addition to discouraging other companies from agreeing to a monitorship or independent third-party review, the negative consequences associated with the FTC's punitive approach may also hinder companies from implementing lasting improvements to their compliance programs. For example, as described above, one of the negative consequences of the FTC's punitive approach is that other companies may be disincentivized from making innovative and comprehensive program changes in fear of the gaps and weaknesses that may be identified (and the related consequences) due to extensive changes implemented throughout the organization. Although the more comprehensive changes would result in a stronger and more sustainable program, the company may choose to implement easier and short-term "check-the-box" changes to avoid being criticized by the monitor. As such, the company's negative perception of a monitor will likely limit the full benefits and value that could be achieved under a monitorship if it works as intended, based on a trusting and collaborative partnership between the monitor, the Company, and the government.

132. In short, based on my background and experience, the FTC's punitive approach under the Proposed Decision and Order will likely harm not only the Company, but will likely cause more far-reaching harm. In adopting this punitive approach, the FTC will likely deter *other* companies from agreeing to an independent third-party review, and from making wide-ranging improvements in compliance, where the company can develop a compliance program that is sustainable by taking risks and designing new elements. That result would deprive society as a whole from the extensive benefits that monitorships/third-party reviews provide.

E. The FTC's Proposed Decision and Order is also Needlessly Intrusive and Would Improperly Insert the Assessor into Meta's Business Decision-making, Likely with Many Negative, Unintended Consequences.

133. In another way, the FTC's Proposed Decision and Order would far exceed the existing, "unprecedented" restrictions on Meta from the 2020 Order. The Proposed Decision and Order would authorize the Assessor to block Meta's ability to introduce any new or modified products,

[180] *Id*. at 129-130.
[181] Veronica Root Martinez, *Public Reporting of Monitorship Outcomes*, 136 Harv. L. Rev. at 757, 821 (2023).
[182] *Id.* (emphasis added).

services or features, if the Assessor's most recent Assessment concludes that the requirements of the Proposed Decision and Order were not met, or if the Assessor identified any material gaps and weaknesses in the Privacy Program. What is "material" is not defined. This section of the Proposed Decision and Order provides as follows:

> **X. VERIFICATION OF MANDATED PRIVACY PROGRAM COMPLIANCE BEFORE THE INTRODUCTION OF NEW OR MODIFIED PRODUCTS, SERVICES, OR FEATURES**
>
> IT IS FURTHER ORDERED that:
>
> A. ***Prior to Respondent introducing any new or modified products, services, or features***, the Assessor's most recent Assessment must show that Respondent's Mandated Privacy Program ***meets all the requirements of Part VIII, and the Assessor did not identify any material gaps or weaknesses in Respondent's Mandated Privacy Program***.
>
> B. If the most recent Assessment shows material gaps or weaknesses in Respondent's Mandated Privacy Program, Respondent ***may not introduce any new or modified products, services, or features, until the Assessor provides written confirmation to the Commission that Respondent has fully remediated all such material gaps and weaknesses.***
>
> C. However, subpart B does not restrict Respondent from introducing any new product or service for the sole purpose of protecting the privacy, confidentiality, security, or Integrity of Covered Information, as long as Respondent provides the Commission with a written description at least thirty (30) days in advance and the Assessor provides approval in writing for its release.
>
> D. Nothing in this provision shall limit Respondent's ability to promptly address security vulnerabilities or implement code fixes that are necessary to maintain existing functionality and do not introduce new products or services.[183]

134. Thus, the FTC's Proposed Decision and Order would create an unusual circumstance in which the Assessor's findings would effectively block Meta's introduction of any new products, services, or features, which is a power reserved under state corporate governance principles to the company's directors and management,[184] who owe fiduciary duties to shareholders under state law

[183] Proposed Decision and Order, Section X (emphasis supplied).
[184] As the Supreme Court has recognized:

> 'Corporations are creatures of state law, and investors commit their funds to corporate directors on the understanding that, except where federal law expressly requires certain responsibilities of directors with

in making such decisions. Moreover, the impact of the Assessor's findings would be wielded based on an undefined standard of what the Assessor concludes is "material" or is something that does not "meet[] all the requirements of Part VIII" of the Proposed Decision and Order. In effect, even those innovations in Meta's business that have nothing to do with privacy would potentially be halted by the Assessor's findings. That is an unwise expansion of the Assessor's role, with impacts far beyond privacy issues.

135. Here, based on my experience, the FTC needlessly tramples the traditional legal boundaries between the Assessor and company management, by providing the Assessor's findings (guided by undefined standards) with a power reserved under state corporate governance principles to the company's management. Moreover, this proposal could easily have serious unintended consequences, including undermining the Assessor's independence. As such, it is a radical approach that should be abandoned.

136. Thus, the FTC's Proposed Decision and Order is a dramatic departure from accepted principles of monitorships. The FTC would radically expand the role of the Assessor in fundamental ways that undermine the goals of utilizing an Assessor. Simply put, it is management's job to develop and launch new products. It is the Assessor's job to evaluate the Company's Privacy Program. It is simply untenable to try to put the Assessor in a position that could impact what new products the Company may launch, based on the Assessor's limited role as defined by the 2020 Order. Obviously, any new product must comply with the privacy obligations under the 2020 Order. But the ability to impact new product launches, even indirectly, extends the Assessor's role beyond what was intended, which was to oversee the Company's remediation efforts.

137. Based on my experience and knowledge of the principles applicable to monitorships, an independent third-party reviewer should not have a responsibility or obligation that so clearly could impact the operation of the Company's business. In my role as the Independent Compliance Monitor and Auditor for VW, the responsibility for VW's business operations, including its product development efforts and the launch of new cars, remained solely with VW management.

> respect to stockholders, state law will govern the internal affairs of the corporation.' 422 U.S., at 84, 95 S.Ct., at 2091.

Santa Fe Indus., Inc. v. Green, 430 U.S. 462, 479, 97 S. Ct. 1292, 1304, 51 L. Ed. 2d 480 (1977) (quoting *Cort v. Ash*, 422 U.S. 66, 84, 95 S. Ct. 2080, 2090, 45 L. Ed. 2d 26 (1975)). The Court later reiterated States' authority to prescribe rules for the internal affairs of corporations:

> It thus is an accepted part of the business landscape in this country for States to create corporations, to prescribe their powers, and to define the rights that are acquired by purchasing their shares. A State has an interest in promoting stable relationships among parties involved in the corporations it charters, as well as in ensuring that investors in such corporations have an effective voice in corporate affairs.

CTS Corp. v. Dynamics Corp. of Am., 481 U.S. 69, 91, 107 S. Ct. 1637, 1650–51, 95 L. Ed. 2d 67 (1987).

I did not have that responsibility, nor would I have agreed to certify the effectiveness of VW's compliance program *in order for the company to introduce a new automobile*. I was mindful that my responsibilities and testing procedures under the monitorship were appropriately within the scope of the agreement. I encouraged my monitor team to work collaboratively with VW employees to ensure that our requests were not overly burdensome on VW and did not unnecessarily disrupt or intrude into VW's affairs.

138. My approach was consistent with statements from Former U.S. Attorney Geoffrey S. Berman, who explained, "[w]e are mindful of the government's proper role in these situations, and the expense and operational disruption that can occur in monitor situations."[185] Acting Deputy Attorney General Craig S. Morford further supported this view regarding the scope of a monitor's role when he said, "the monitor's responsibilities should be *no broader than necessary* to address and reduce the risk of recurrence of the corporation's misconduct."[186] As another example, in *United States v. Deutsche Telekom AG, et al.,* the DOJ Antitrust Division made it clear that the monitor "shall have no responsibility or obligation for the operation of Defendants' businesses."[187]

139. The 2020 Order did not require the Assessor to categorize gaps and weaknesses as "material" based on the severity of its findings. The Proposed Decision and Order, on the other hand, would require the Assessor to confirm whether it identified "any *material* gaps or weaknesses in Respondent's Mandated Privacy Program."[188] However, the term "material" is not defined within the Proposed Decision and Order. In contrast, other authorities provide guidance for evaluating the severity of gaps and weaknesses identified during independent reviews or audits. For example, the Public Company Accounting Oversight Board (PCAOB) defines specific terms, including "material weakness" and "significant deficiencies,"[189] to categorize the severity of gaps and weaknesses identified.

140. These restrictions and requirements under the Proposed Decision and Order will also likely stifle Meta's innovation in its business, and thus will negatively impact consumers.

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[185] *U.S. Attorney Geoffrey Berman Keynote Speech on Monitorships*, https://www.justice.gov/usao-sdny/speech/us-attorney-geoffrey-s-berman-delivers-keynote-address-new-york-university-law (Oct. 12, 2018).
[186] Memorandum from Craig S. Morford, Acting Deputy Att'y Gen., *Selection and Use of Monitors in Deferred Prosecution Agreements and Non-Prosecution Agreements with Corporations* at 2 (Mar. 7, 2008).
[187] *Final Judgment*, *United States et al., v. Deutsche Telekom AG, et al*., Case No. 19-cv-2232, ECF. No. 85 at 27 (D.D.C. Apr. 1, 2020).
[188] Proposed Decision and Order, Section X (emphasis added).
[189] The PCAOB defines a material weakness as "[a] deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis" and a significant deficiency as "[a] deficiency, or a combination of deficiencies, in internal control over financial reporting, that is less severe than a material weakness yet important enough to merit attention by those responsible for oversight of the company's financial reporting." *PCAOB AU Section 325*, https://pcaobus.org/oversight/standards/archived-standards/pre-reorganized-auditing-standards-interpretations/details/AU325#:~:text=A%20significant%20deficiency%20is%20a,of%20the%20company's%20financial%20reporting (last accessed Nov. 2, 2023).

141. Moreover, if the Assessor's findings have the ability to impact new product launches, the Assessor's independence could be impaired. [190] A monitor or third-party reviewer must remain independent and objective to provide the regulator with an impartial evaluation of the monitored entity's remediation efforts. By allowing the Assessor's findings to impact the introduction of new or modified products, services, and features, which are subject to the governance processes and Safeguards of Meta's Privacy Program, the Assessor would essentially have an impact on management decisions for a department or function that is subject to its review, thus impairing the Assessor's independence. This ultimately undermines the overall role and purpose of the Assessor as an "independent third party, not an employee or agent of the entity."[191]

142. Yet another unintended consequence of the FTC's Proposed Decision and Order is that the Assessor's objectivity could be impaired.[192] The ability of the Assessor to impact the introduction of new or modified products, services, and features under the Proposed Decision and Order would put the Assessor in a position of potentially being *blamed* for delaying the launch of a new product, disrupting the Company's operations, and inhibiting innovation and advancement.[193] This may put pressure on the Assessor to provide a "clean" assessment report without any material gaps or weaknesses to prevent disrupting or jeopardizing Meta's business operations. Conversely, the Assessor may be disincentivized from confirming that the Privacy Program is free of material gaps due to the associated risks and liability of doing so. Under either scenario, the responsibilities assigned to the Assessor under the FTC Proposed Decision and Order could ultimately impair its objectivity.

143. Again, the FTC's approach violates the established principle that an independent third-party reviewer should take the *least intrusive* steps necessary to ensure compliance.[194]

144. In addition, by endowing the Assessor's findings with the ability to stop the Company's launch of new or modified products, services, or features, the FTC is essentially making the Assessor its agent or deputy for regulatory enforcement responsibilities. Such expanded authority would far exceed the role of an independent third-party reviewer.

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[190] According to the Institute of Internal Auditors ("IIA"), independence is "the freedom from conditions that threaten the ability of the [monitor] to carry out [monitoring] responsibilities in an unbiased manner." *IPPF – Practice Guide, Independence and Objectivity*, The Institute of Internal Auditors at 3 (2011).

[191] *U.S. Attorney Geoffrey Berman Keynote Speech on Monitorships* at 8 (2018).

[192] Per the IIA, objectivity is "an unbiased mental attitude that allows internal auditors to perform engagements in such a manner that they believe in their work product and that no quality compromises are made . . . ." *IPPF – Practice Guide, Independence and Objectivity*, The Institute of Internal Auditors at 3 (2011).

[193] Consistent with these principles, Acting Deputy Attorney General Craig S. Morford stated, "a monitor also is not an agent or employee of the Government." Memorandum from Craig S. Morford, Acting Deputy Att'y Gen., *Selection and Use of Monitors in Deferred Prosecution Agreements and Non-Prosecution Agreements with Corporations* at 3 (Mar. 7, 2008). Similarly, a monitor should remain independent and objective, and a monitor's finding should not have authority to impact a corporation's product development efforts.

[194] *See* authorities cited at footnotes 173 and 175.

145. Yet another flaw to the FTC's approach is that, by permitting the Assessor's findings to block the Company's launch of new or modified products, services, or features, the FTC is effectively intertwining some of the Company's management responsibilities with the Assessor. Management responsibilities ultimately belong to Meta's Board of Directors and Senior Management, who owe fiduciary duties to the Company and its shareholders. Once endowed with the powers contemplated by the FTC's Proposed Decision and Order, the Assessor could interfere with, and as a result be entangled in, the fiduciary relationship between the Company and its shareholders. Based on my experience, this is inconsistent with the intended role of an independent third-party reviewer, who owes *no* fiduciary duties to an organization or its shareholders. For example, Acting Deputy Attorney General Craig S. Morford stated, "[a] monitor is not responsible to the corporation's shareholders."[195] The American Law Institute (ALI) takes a consistent view in its recent standards defining the appropriate role of a monitor. It points out that a monitor "does not owe any fiduciary duties to the organization or its shareholders."[196] Former U.S. Attorney Geoffrey S. Berman further reiterated that "[w]e are not eager to displace corporate management in the execution of its fiduciary duties . . . ."[197]

146. Moreover, the FTC's approach creates significant federalism concerns, since it would disrupt state corporate law principles of corporate decision-making by directors and senior management, who owe fiduciary duties to shareholders.

147. None of these results follow if traditional principles applicable to monitors and other independent third-party reviewers are respected.

148. Finally, in my experience, this type of response from the government is unprecedented. Typically, when there is an unreasonable or punitive response, it is from the assessor or the monitor, and the *government* is the party who attempts to temper the unreasonable response. In this case, the government is taking a punitive approach, which is inconsistent and unusual based on my experience. While the Assessor emphasized and acknowledged Meta's cooperation and efforts to improve its program, the FTC's approach will limit the overall success and positive impact that the Assessor can have on the Company and cause broader harm, as explained in Opinion C.

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[195] Memorandum from Craig S. Morford, Acting Deputy Att'y Gen., *Selection and Use of Monitors in Deferred Prosecution Agreements and Non-Prosecution Agreements with Corporations* at 4 (Mar. 7, 2008).
[196] Principles of the Law, Compliance and Enforcement for Organizations § 6.11 TD No 2 at 2 (American Law Institute 2021).
[197] *U.S. Attorney Geoffrey Berman Keynote Speech on Monitorships* at 5 (2018).

VII. CONCLUSION

As explained above, based on my 40+ years of experience dealing with monitorships/independent third-party reviews from the perspectives of the company, the monitor, and the government, there are established best practices and generally accepted principles for a monitor or assessor to help a company create lasting improvements in compliance. They include recognition that compliance improvements must be allowed to *evolve over time*—a period of years; the most effective approach is a *remedial* one, based on a relationship of trust; a *punitive* approach undermines efforts to create a culture of compliance at the company in question; and a punitive approach with one company discourages other companies from entering into monitorships and making lasting changes in compliance.

For the reasons discussed above, the FTC's Proposed Decision and Order takes a punitive approach that is unwise and unwarranted. It would undermine the Assessor's helping Meta bring about lasting change in compliance. This punitive approach would also likely discourage other companies from agreeing to use independent third-party reviewers, and from making meaningful improvements in compliance. The FTC's approach is also needlessly intrusive, by injecting the Assessor into internal decision-making at the Company, which raises federalism concerns since this is an area traditionally reserved to state corporation law. In sum, the FTC's approach is wrong and should be abandoned.

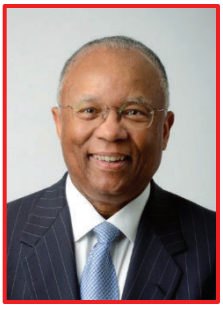
Larry D. Thompson

3/6/24

Date

EXHIBIT 1
Curriculum Vitae of Larry D. Thompson

PUBLIC



Larry D. Thompson
Counsel, Finch McCranie, LLP
229 Peachtree Street, N.E.
Suite 2500, International Tower
Atlanta, GA 30303
lthompson@finchmccranie.com

EMPLOYMENT

- **April 2017-September 2020** Appointed by the U.S. Department of Justice as the Independent Corporate Compliance Monitor and Auditor for Volkswagen AG.
- **July 2015-Present** Counsel to the Atlanta law firm of Finch McCranie, LLP.
- **July 2012-December 2014** Executive Vice President, Government Affairs, General Counsel and Corporate Secretary for PepsiCo, Inc., with responsibility for the company's worldwide legal function, as well as its government affairs and public policy organizations. He also oversaw the company's global compliance function and served as President of the PepsiCo Foundation.
- **2011-2017** Professor of University of Georgia School of Law as the holder of the John A. Sibley Chair of Corporate and Business Law
- **2004-2011** Senior Vice President of Government Affairs, General Counsel and Secretary of PepsiCo, Inc.
- **2003** Senior Fellow with The Brookings Institution in Washington, D.C
- **2001-2003** Served in the U.S. Department of Justice as the U.S. Deputy Attorney General under George W. Bush. In 2002, Attorney General John Ashcroft named Mr. Thompson to lead the National Security Coordination Council. Also, in 2002, President Bush named Mr. Thompson to head the Corporate Fraud Task Force, where he led, among other matters, the government's Enron investigation. Mr. Thompson also led the establishment of the Department of Justice's Attorney Outreach Program, which resulted in the recruitment of attorneys from a wide range of ethnic, economic, geographic, and racial backgrounds.
- **April 2000** Selected by Congress to chair the Judicial Review Commission on Foreign Asset Control.
- **1995-1998** Appointed Independent Counsel for the Department of Housing and Urban Development Investigation by the Special Panel of U.S. Circuit Court Judges appointed by the U.S. Supreme Court.
- **1977-1982** as Associate, and **1986-2001** as Partner in the Atlanta, Georgia law firm of King & Spalding, Antitrust and Litigation departments, and founding co-chair of the firm's special matters and government investigations practice. While at King & Spalding, Mr. Thompson conducted numerous internal investigations and also tried and argued cases on behalf of individual and corporate clients.
- **1982-1986** Served as the U.S. Attorney for the Northern District of Georgia. In that role, he directed the Southern Organized Crime Drug Enforcement Task Force and served on the Attorney General's Economic Crime Council.

AWARDS AND DISTINCTIONS

- Former Lead Director and former Chairman of the Nominating, Governance and Corporate Responsibility Committee of the The Southern Company
- Former Member of the Compensation Committee of the Graham Holdings Company (formerly The Washington Post Company), 2011
- Member of certain Franklin Templeton Mutual Series Funds Board of Directors
- Member of George W. Bush Foundation Board of Directors
- Elected Fellow of the American Board of Criminal Lawyers
- Former Senior Fellow with The Brookings Institution, 2003
- Trustee on the Chautauqua Institute Board of Trustees, 2014

- Recipient of the Edmund Jennings Randolph Award for outstanding contributions to the accomplishment of the Department of Justice's mission, 2011
- Recipient of the Outstanding Litigator Award by the Federal Bar Association, 2001
- Recipient of the A.T. Walden Award for outstanding accomplishments to the legal profession and recognized as a member of the Gate City Bar Association Hall of Fame, Atlanta, Georgia
- In 2017, Mr. Thompson was honored with the first-ever William T. Coleman, Jr. Lifetime Achievement Award by the African-American Managing Partners Network
- Former Trustee to the University of Georgia Foundation, 2016
- In 2016, named Chairman of the Board of Directors of the Ethics Research Center (ERC), the research arm of the Ethics & Compliance Initiative (ECI). In 2014, *Ethisphere* magazine recognized Mr. Thompson by noting that as *"the outgoing General Counsel of one of the world's most well-recognized corporations [Thompson] has set the bar high for GC's everywhere. [His] background in both public and private sectors earned him the trust and respect of his peers worldwide as he demonstrated how ethics and integrity are essential components of business success."*
- Elected Member of Board of Curators of The Georgia Historical Society, 2020
- Elected Member of the American Law Institute's Council, 2021
- Elected Member of the American College of Governance Counsel
- Mr. Thompson was named a Lifetime Achievement Award winner in The National Law Journal Awards, 2021
- Honored as a Distinguished Alumnus, Culver-Stockton College, 1983
- In 2022, Mr. Thompson was honored with the Michigan State University of Social Science Distinguished Alumni Award, and in 2023, was honored with the Michigan State University Distinguished Alumni Award.

EDUCATION

- Bachelor of Arts degree from Culver-Stockton College, graduating *cum laude* in 1967
- Master's degree from Michigan State University, 1969
- Juris Doctor (J.D.) Law degree from the University of Michigan, 1974
- Honorary Doctor of Laws degree from Pace University in New York, 2006
- Honorary Doctorate from St. Louis University, 2021

Mr. Thompson speaks and writes frequently on a number of legal topics. Some of his publications include:

- *In-sourcing Corporate Responsibility for Enforcement of the Foreign Corrupt Practices Act,* 51 American Criminal Law Review 199 (2014)

- *The Responsible Corporation: Its Historical Roots and Continuing Promise,* in 29 Notre Dame Journal of Law, Ethics & Public Policy 199 (2015).

- *How America Tolerates Racism in Jury Selection*, New York Times (October 30, 2015).

- *Oversight of the False Claims Act,* Testimony by Professor Larry D. Thompson before the U.S. House of Representatives Judiciary Subcommittee on the Constitution and Civil Justice, Presentations and Speeches. 43 (2016).

- *Inquiring into the Expanded Use of Deferred-Prosecution and Non-Prosecution Agreements,* Conversations with The Honorable Jay B. Stephens and The Honorable Larry D. Thompson, Washington Legal Foundation (2016)

EXHIBIT 2
Materials Reviewed

Exhibit 2: Materials Reviewed

TITLE	FILER/AUTHOR	DATE	URL
Assessor Reports			
Report on the Initial Assessment of Meta's Privacy Program	Protiviti (Assessor)	June 21, 2021	
Report on the First Two-Year Assessment Period of Meta's Privacy Program	Protiviti (Assessor)	June 21, 2023	
Filings			
Decision and Order	Federal Trade Commission	August 10, 2012	
Final Judgment in the matter of the UNITED STATES OF AMERICA et al., Plaintiffs, v. DEUTSCHE TELEKOM AG, T-MOBILE US, INC., SOFTBANK GROUP CORP., SPRINT CORPORATION, and DISH NETWORK CORPORATION	United States District Court for the District of Columbia	April 1, 2020	
Order Modifying Prior Decision and Order (Docket No. C-4365)	Federal Trade Commission	April 27, 2020	
Order to Show Cause Why The Commission Should Not Modify the Order and Enter the Proposed New Order	Federal Trade Commission	May 3, 2023	
Preliminary Finding of Facts in Support of the Order to Show Cause	Federal Trade Commission	May 3, 2023	
Proposed Decision and Order (Docket No. C-4365)	Federal Trade Commission	May 3, 2023	
Stipulated Order for Civil Penalty, Monetary Judgment, and Injunctive Relief	Federal Trade Commission	July 24, 2019	
Volkswagen Plea Agreement, United States of America v. Volkswagen AG	United States District Court Eastern District of Michigan	March 10, 2017	-
Third-Party Guidance			
A Framework for OFAC Compliance Commitments	Office of Foreign Assets Control (OFAC)	May 2019	-
Auditing Standards of the Public Company Accounting Oversight Board	Public Company Accounting Oversight Board (PCAOB)	Last Accessed November 6, 2023	chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://assets.pcaobus.org/pcaob-dev/docs/default-source/standards/auditing/documents/auditing_standards_audits_after_december_15_2020.pdf?sfvrsn=5862544e_4
Business Ethics: A Manual for Managing a Responsible Business Enterprise in Emerging Market Economies	U.S. Department of Commerce, International Trade Administration (ITA)	2004	-
Chief Compliance Officer Annual Report Form and Content, Appendix C to Part 3 – Guidance on the Application of § 3.3(e)	Code of Federal Regulations (C.F.R.)	September 26, 2018	
Compliance Risk Management Programs and Oversight at Large Banking Organizations with Complex Compliance Profiles, SR 08-8/CA 08-11	Federal Reserve Board	February 26, 2021	-
Criminal Justice Standards - Monitors	American Bar Association (ABA)	Last Accessed September 25, 2023	https://www.americanbar.org/groups/criminal_justice/standards/MonitorsStandards/
Evaluation of Corporate Compliance Programs	U.S. Department of Justice	March 2023	
Evaluation of Corporate Compliance Programs in Criminal Antitrust Investigations	U.S. Department of Justice	July 2019	

TITLE	FILER/AUTHOR	DATE	URL
Good Practice Guidance on Internal Controls, Ethics and Compliance	Organization for Economic Co-operation and Development (OECD)	February 2010	-
ICC Rules on Combating Corruption, Part III: Elements of an Efficient Corporate Compliance Programme	International Chamber of Commerce (ICC)	2011	-
IPPF – Practice Guide, Independence and Objectivity	Institute of Internal Auditors (IIA)	October 2011	
NIST Privacy Framework: A Tool for Improving Privacy Through Enterprise Risk Management, Version 1.0	National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce	January 16, 2020	
Partnering Against Corruption Initiative: Global Principles for Countering Corruption, Annex I: Guidance on Compliance	World Economic Forum	May 2016	-
Privacy Management Framework ("PMF")	AICPA & CIMA -- Information Management and Technology Assurance Executive Committee	2020	
Rating the Adequacy of Risk Management Processes and Internal Controls at State Member Banks and Bank Holding Companies, SR 95-51 (SUP)	Federal Reserve Board	February 26, 2021	-
Resource Guide to the U.S. FCPA, Second Edition	U.S. Department of Justice	July 2020	
Summary of World Bank Group Integrity Compliance Guidelines	The World Bank	Undated	-
What Good and Effective Data Privacy Accountability Looks Like: Mapping Organisations' Practices to the CIPL Accountability Framework	The Centre for Information Policy Leadership (CIPL)	May 2020 (last accessed September 25, 2023)	https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cipl_accountability_mapping_report__27_may_2020_.pdf
Other Materials			
A Privacy-Focused Vision for Social Networking	Mark Zuckerberg, Facebook Post	March 12, 2021 (last accessed September 25, 2023)	https://www.facebook.com/notes/2420600258234172/
Ancillary Remedies in SEC Civil Enforcement Suits, 89 Harv. L. Rev.	James R. Farrand	1976	
Answering to a Higher Authority: Sovereign-Mandated Oversight in the Board room and the C-Suite, 17 Fordham J. Corp. & Fin. L.	Thomas F. O'Neill III and Brendan Kennedy	2012	
Can Corporate Monitorships Improve Corporate Compliance?, 34 J. Corp. L.	Cristie Ford & David Hess	2009 (last accessed September 29, 2023)	https://webuser.bus.umich.edu/dwhess/Ford%20and%20Hess%20JCL%202009_PDF.pdf
Facebook post regarding the settlement with the Federal Trade Commission about privacy	Mark Zuckerberg, Facebook Post	July 24, 2019 (last accessed September 25, 2023)	https://www.facebook.com/zuck/posts/pfbid0tqsYSgzo2Bxxg3RrchTkmQB5z36dhaeWMtVsSQCrn4vti4PGrz1Qnw35a8cwrxeQl?ref=embed_post
Facebook Settlement Press Conference, 2019 WL 3408699	Federal Trade Commission	July 24, 2019	-
First Annual Report by the Independent Compliance Auditor for the VW Defendants	Larry D. Thompson, LLC	August 17, 2018	https://www.vwcourtsettlement.com/wp-content/uploads/2018/08/ICAR-Aug2018-English.pdf

TITLE	FILER/AUTHOR	DATE	URL
FTC Imposes $5 Billion Penalty and Sweeping New Privacy Restrictions on Facebook	Federal Trade Commission	July 24, 2019 (last accessed September 28, 2023)	https://www.ftc.gov/news-events/news/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions-facebook
FTC Proposes Blanket Prohibition Preventing Facebook from Monetizing Youth Data	Federal Trade Commission	May 3, 2023 (last accessed September 28, 2023)	https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-proposes-blanket-prohibition-preventing-facebook-monetizing-youth-data
FTC To Hold Facebook CEO Mark Zuckerberg Liable For Any Future Privacy Violations	NPR	July 24, 2019 (last accessed August 24, 2023)	https://www.npr.org/2019/07/24/741282397/facebook-to-pay-5-billion-to-settle-ftc-privacy-case
Keep Building Better: The Meta Code of Conduct	Meta	Last Accessed on September 25, 2023	https://s21.q4cdn.com/399680738/files/doc_downloads/governance_documents/2022/09/new/Meta-Code-of-Conduct-(1).pdf
Modern-Day Monitorships, 33 Yale Journal on Reg.	Veronica Root	2016	
Principles of the Law, Compliance and Enforcement for Organizations § 6.11 TD No 2	American Law Institute (ALI)	2021	
Public Reporting of Monitorship Outcomes, 136 Harvard Law Review	Veronica Root Martinez	January 2023	-
Revised Memorandum on Selection of Monitors in Criminal Division Matters, Memorandum from Kenneth A. Polite, Jr., Assistant Attorney General, Criminal Division	U.S. Department of Justice	March 1, 2023	https://www.justice.gov/criminal-fraud/file/1100366/download
Selection and Use of Monitors in Deferred Prosecution Agreements and Non-Prosecution Agreements with Corporations, Memorandum from Craig S. Morford, Acting Deputy Attorney General	U.S. Department of Justice	March 7, 2008	-
Statement of Chairman Joe Simons and Commissioners Noah Joshua Phillips and Christine S. Wilson, Letter to FTC, 2019 WL 3386450	Federal Trade Commission	July 24, 2019	-
Statement of Principles for Selection of Corporate Monitors in Civil Settlements and Resolutions, Memorandum from Stuart F Delery, Acting Associate Attorney General	U.S. Department of Justice	April 13, 2016 (last accessed August 11, 2023)	https://www.justice.gov/oip/foia-library/asg_memo_statement_of_principles_corporate_monitors_civil_settlements/download
The Corporate Monitor: The New Corporate Czar?, Michigan Law Review Volume 105 Issue 8	Timothy L. Dickinson; Vikramaditya Khanna	2007	-

TITLE	FILER/AUTHOR	DATE	URL
The IIA's Three Lines Model, An update of the Three Lines of Defense	Institute of Internal Auditors (IIA)	July 2020 (last accessed September 28, 2023)	https://www.theiia.org/globalassets/documents/content/articles/guidance/practice-guides/independence-and-objectivity/111032-prof-independenceobjectivity-pg-fnl.pdf
The Life Cycle of a Monitorship, Global Investigations Review, The Guide to Monitorships, 3d. Edition	Thomas J. Perrelli	April 25, 2022 (last accessed on August 11, 2023)	https://globalinvestigationsreview.com/guide/the-guide-monitorships/third-edition/article/the-life-cycle-of-monitorship
The Monitor - "Client" Relationship, 100 Va. L. Rev.	Veronica Root	2014	
U.S. Attorney Geoffrey S. Berman Delivers Keynote Address at New York University Law School on Monitorship	U.S. Department of Justice	October 12, 2018	-
Volkswagen AG Granted More Time to Test Compliance Programs Under Its U.S. Monitorship	Volkswagen Group News	October 17, 2019 (last accessed September 25, 2023)	https://www.volkswagen-newsroom.com/en/press-releases/volkswagen-ag-granted-more-time-to-test-compliance-programs-under-its-usmonitorship-5450
When do Enforcement Agencies Decide to Appoint a Monitor?, Global Investigations Review, The Guide to Monitorships, 3d. Edition	Bart M. Schwartz	April 25, 2022 (last accessed on August 11, 2023)	https://globalinvestigationsreview.com/guide/the-guide-monitorships/third-edition/article/when-do-enforcement-agencies-decide-appoint-monitor
Cases			
Carmell v. Texas, 529 U.S. 513, 541, 120 S. Ct. 1620, 1637, 146 L. Ed. 2d 577 (2000)		2000	
Cort v. Ash, 422 U.S. 66, 84, 95 S. Ct. 2080, 2090, 45 L. Ed. 2d 26 (1975)		1975	-
CTS Corp. v. Dynamics Corp. of Am., 481 U.S. 69, 91, 107 S. Ct. 1637, 1650–51, 95 L. Ed. 2d 67 (1987)		1987	
Denezpi v. United States, 142 S. Ct. 1838, 1854, 213 L. Ed. 2d 141 (2022)(quoting *Cummings v. Missouri*, 4 Wall. 277, 325, 18 L.Ed. 356 (1867))		2022	
Santa Fe Indus., Inc. v. Green, 430 U.S. 462, 479, 97 S. Ct. 1292, 1304, 51 L. Ed. 2d 480 (1977)		1977	
United States v. Siemens Aktiengesellschaft, Case 1:08-cr-00367-RJL (D.D.C.)		2008	

EXHIBIT 3
Analysis of the Assessor's Initial Report, Appendix A "Safeguard Listing"

Exhibit 3: Analysis of the Assessor's Initial Report, Appendix A "Safeguard Listing"

Safeguard Status (A)	Number of Safeguards	# of Total
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

(A)	Safeguard Status was obtained from Protiviti's Report on its Initial Assessment of Meta's Privacy Program (June 21, 2021) - Appendix A, Safeguard Listing (Page 163). My analysis excluded safeguards that [redacted] Deprecated Safeguards: According to the Assessor, [redacted] Out of Scope Safeguards: According to the Assessor, there were some elements of Meta's privacy program which did not address either relevant privacy risks nor other requirements in Sections VII.A – VII.J of the 2020 Order. The safeguards that were not included in the Assessor's initial assessment related to Legal or Administrative Order requirements and did not relate to requirements in Section VII of the 2020 Order. These elements of Meta's privacy program were considered out of scope for the initial assessment. (Page 8).
(B)	Based on Appendix A - Safeguard Listing of the Assessor's initial report, the implemented safeguards include: [redacted]
(C)	Based on Appendix A - Safeguard Listing of the Assessor's initial report, the planned safeguards include: [redacted]

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

EXPERT REPORT OF EUGENE F. SOLTES

EXPERT REPORT OF PROFESSOR EUGENE F. SOLTES

I. PROFESSIONAL BACKGROUND AND QUALIFICATIONS

I am the McLean Family Professor of Business Administration at Harvard Business School ("HBS"), where I have taught since July of 2009 and currently serve as the head of the Accounting and Management unit. I received a PhD in Business Administration and an MBA from the University of Chicago's Booth School of Business and an AM in statistics and an AB in economics from Harvard University. A copy of my curriculum vitae is attached hereto as **Exhibit A**.

I have extensive research expertise on issues of organizational compliance and culture and specialize in examining the design and implementation of compliance programs, with a particular emphasis on gathering and analyzing quantitative and qualitative data to evaluate compliance program effectiveness. I have published extensively on this topic, including articles that are relevant to or inform my specific opinions here, including articles examining why compliance programs succeed or fail, evaluating the effectiveness of corporate compliance program design, and establishing compliance programs at multinational organizations.[1] In addition to these articles, I have published over 60 books, book chapters, articles, and case studies across leading finance, accounting, and law journals, including the books *Why They Do It: Inside the Mind of the White-Collar Criminal* (New York: Public Affairs, 2016) and *Corporate Criminal Investigations and Prosecutions* (Aspen Publishing, 2022). I also currently serve as an Associate Editor of the *Harvard Data Science Review*.

[1] *See, e.g.*, Chen, Hui, and Eugene Soltes, "Why Compliance Programs Fail: And How to Fix Them," *Harvard Business Review* 96, no. 2 (Mar.–Apr. 2018), –116–25; Soltes, Eugene, "Evaluating the Effectiveness of Corporate Compliance Programs: Establishing a Model for Prosecutors, Courts, and Firms," *NYU Journal of Law & Business* 14, no. 3 (Summer 2018), 965–1011; Soltes, Eugene, "Designing a Compliance Program at AB InBev," Harvard Business School Case 118-071 (Mar. 2018, revised Apr. 2018).

My teaching at HBS is focused on graduate-level MBA courses and executive education programs in the areas of risk, audit, and performance metrics. These courses include the General Management Program, Risk Management for Corporate Leaders, and Audit Committees in a New Era of Governance. In addition to HBS, I have also lectured or presented about my work at more than 45 other institutions. I have led compliance and risk training sessions for government agencies (including the Department of Justice (the "DOJ"), the Securities and Exchange Commission (the "SEC"), the Commodity Futures Trading Commission (the "CFTC"), the Department of Treasury, and the Financial Conduct Authority), and at federal judicial conferences.

In addition to my research and teaching at HBS, I am the Founder and Director of Integrity Lab, LLC ("Integrity Lab"), which supports the data-driven design, evaluation, and implementation of compliance programs for multinational corporations, government agencies, and startups. In the past two years, I, along with other colleagues at Integrity Lab, have advised over two dozen Fortune 500 companies. We also currently support the software-based compliance platform for the U.S. General Accountability Office.

Within the prior two years, Integrity Lab provided advisory services to Meta Platforms, Inc. ("Meta") about enhancing speak-up culture and risk prioritization. None of this advisory work related to the design or implementation of the privacy compliance program described in this Commission's April 27, 2020 Order (the "Order"). Integrity Lab's revenue from this advisory work for Meta was not financially material to Integrity Lab's operations.[2]

[2] SEC Staff Accounting Bulletin No. 99 - Materiality (Release No. SAB 99), 17 C.F.R. Part 211 (Aug. 12, 1999) (expressing no objection to 5% "rule of thumb" as an initial step in assessing materiality); Vorhies, James Brady, "The New Importance of Materiality," Journal of Accountancy (May 1, 2005), https://www.journalofaccountancy.com/issues/2005/may/thenewimportanceofmateriality.html (describing "5% rule" as fundamental basis for working materiality estimates).

Meta, through its counsel at Davis Polk & Wardwell LLP ("Davis Polk"), retained me to provide this report in connection with Meta's answer to the Commission's May 3, 2023 Order to Show Cause (the "OTSC"). I am being compensated by Davis Polk at my standard hourly rate of $1,450 for the time spent preparing this report and any time later required, and other personnel working under my direction at Integrity Lab are being compensated by Davis Polk at an hourly rate of $750–$950. The fees paid to me are not contingent on the outcome of this matter or the opinions provided in this report.

II. THE ORDER

Part VII of the Order required Meta to "establish and implement, and thereafter maintain a comprehensive privacy program" (the "Privacy Program").[3] The Order further provided that, in order to satisfy this requirement, Meta needed to meet a series of specified requirements within 180 days of the effective date of the Order. Part VIII of the Order required Meta to obtain "initial and biennial assessments" of its Privacy Program by an independent, third party assessor.[4] Each assessment was required to, among other things: (i) determine whether Meta has implemented and maintained the mandated Privacy Program; (ii) assess the effectiveness of Meta's implementation and maintenance of each of the specified requirements listed in Part VII; and (iii) identify any gaps or weaknesses in Meta's Privacy Program.[5] The concept of a "comprehensive privacy program" is not defined in the Order. In my opinion, the requirements in Part VII of the Order should be interpreted as mandating Meta's need to establish a compliance program based on general principles of comprehensiveness. Although not required under Part VII of the Order, I have also considered the third party assessor's view of the effectiveness of Meta's implementation and

[3] Order, Part VII.
[4] Order, Part VIII.A.
[5] Order, Part VIII.D.

maintenance of the mandated Privacy Program. The Order provides no definition of the concept of "effectiveness." Therefore my opinions herein rely on accepted general principles of compliance program design as described by scholarly researchers, industry practitioners, and other regulatory and enforcement agencies.

III. OUTLINE OF THIS REPORT AND BASIS OF OPINIONS OFFERED

In this report, I will first address the foundational issue of how to measure the comprehensiveness and effectiveness of a compliance program. I will then turn to my review and analysis of Protiviti, Inc.'s (the "Assessor's") July 1, 2021 initial report (the "Initial Report") (and, where appropriate, the Assessor's June 21, 2023 report (the "First Biennial Report")). Overall, I will conclude from my analysis of the Assessor's findings that, at the time of the Initial Report, Meta had established the foundations of a comprehensive and effective Privacy Program.

I will then drill down into each of the [redacted] which comprise Meta's Privacy Program. I will summarize the Assessor's key findings across the [redacted], before examining the individual gaps that the Assessor identified in each domain. I will conclude that Meta took a responsive and appropriately risk-based approach to remediating gaps identified by the Assessor. The individual gaps identified in the Initial Report are, I will conclude, consistent with a maturing but effective compliance program and, based on the resources being deployed by Meta, one that is likely to become best in class.

The opinions offered herein are based on my detailed review of the Initial Report, the First Biennial Report, the Order, and the OTSC. With the exception of two additional prominent *Wall Street Journal* articles about Meta's compliance training program,[6] my review does not include

[6] Dylan Tokar, "How Meta Uses Netflix-Style Videos to Get Engineers Thinking About Compliance," *Wall Street Journal* (May 18, 2023), https://www.wsj.com/articles/how-meta-uses-netflix-style-videos-to-get-engineers-thinking-about-compliance-496d2293; *see also* Dylan Tokar, "Microsoft Employees Are Hooked on the Company's Training Videos," *Wall Street Journal* (May 10, 2023), https://www.wsj.com/articles/microsoft-employees-are-

any additional information related to the design of Meta's program, including information that could have been provided by Meta.

Though I reviewed the First Biennial Report, I have focused on the Initial Report in view of the requirements of the Order and the issues raised by the OTSC. My aim is to evaluate the issues raised by the Commission in the OTSC (and the supporting statement of facts) in view of the information available to the Commission at that time, which included only the Initial Report. Any references to the First Biennial Report will be incidental and offered only where they add essential information or context relevant to the opinions set forth herein.

IV. PRINCIPLES OF EFFECTIVE COMPLIANCE PROGRAM DESIGN

A. A Compliance Program's Effectiveness Is Driven by Its Collective Impact in Practice, Not Simply Individual Policies on Paper

In the simplest terms, a compliance program is a set of processes, procedures, and control systems that support the alignment of employee conduct with an organization's goals. These goals include complying with applicable regulations, protecting the organization's reputation (*i.e.*, managing and mitigating reputational risk), and driving the organization's business strategy.

To achieve its objective of aligning an organization with external regulatory requirements and organizational strategy, an effective compliance program must influence employee behavior. An effective compliance program therefore cannot be measured solely by the existence of processes and procedures documented on paper. Nor can the effectiveness of a compliance program be adequately assessed by examining individual compliance initiatives in isolation. Rather, it is necessary to consider how the program operates in practice to influence employee conduct, including the ways in which individual processes and controls operate in conjunction

hooked-on-the-companys-training-videos-c8684a1. Though this article mentions Meta's training videos, I have not based any of the substance of my opinions herein on the author's observations.

with one another and the extent to which compliance processes are embedded into, and supported by, an organization's culture.

My scholarly research has examined how an organization's surrounding culture—the values, beliefs, and practices that guide and inform employee behavior—can materially affect the day-to-day functioning of compliance initiatives within an organization. Factors such as the words and actions of company leadership, the perceptions of employees, and the resources allocated to compliance can all provide indications of an organization's compliance culture. For example, I have observed instances where a company's hotline to report issues might be well documented in a company's compliance process manual, but nevertheless has limited effectiveness because employees felt they would be retaliated against for using it.[7] In another example, I have observed instances where a company lacked formalized reporting channels or mature documented processes, but these gaps on paper were mitigated by a strong culture of psychological safety that empowered employees to speak up when they felt or observed that a process was amiss.

Ultimately, to assess the effectiveness of a compliance program, a holistic assessment of the program in its entirety is required. This means looking beyond individual processes, procedures, and controls on paper and taking into account how they operate together and are supported by the organization through its resourcing and culture.

Applying these principles to the specific context at hand, it is important to understand the intent behind the Order's requirements. The Commission's mission, as noted on the Commission's public website, is to "[protect] the public from deceptive or unfair business practices and from

[7] Psychological safety is the "belief that one can speak up without risk of punishment or humiliation." It has been "established as a critical driver of high-quality decision making, healthy group dynamics and interpersonal relationships, greater innovation, and more effective execution in organizations." Amy C. Edmondson and Mark Mortensen, "What Psychological Safety Looks Like in a Hybrid Workplace," *Harvard Business Review* (Apr. 19, 2021), https://hbr.org/2021/04/what-psychological-safety-looks-like-in-a-hybrid-workplace.

unfair methods of competition through law enforcement, advocacy, research, and education."[8] Thus, the goal of the Commission-mandated privacy program is to mitigate the actual occurrence of undesired practices. An effective program supporting these regulatory goals should not be examined on the basis of what initiatives exist on paper, but instead what the overall program achieves in reality to mitigate such practices. While Part VII of the Order specified a series of individual requirements for Meta's Privacy Program, a rigorous assessment of Meta's Privacy Program effectiveness requires these individual components to be assessed holistically, taking into account how all the elements of Meta's Privacy Program are designed, resourced, and operate to address privacy risks.

B. Building an Effective Compliance Program Is a Dynamic Process That Takes Time

Even if unconstrained by financial and personnel resources, an organization would not be able to build a maximally effective compliance program or remediate a program overnight. Building a compliance program that operates effectively in practice is a dynamic process that takes time. Based on my experience, while an organization can rapidly design compliance processes on paper over the course of weeks and months, remediating a program to achieve full operational effectiveness requires years of dedicated, focused effort and resourcing.

While there may be opportunities to rapidly develop some compliance initiatives, genuinely effective and impactful initiatives often take longer to design, implement, and fully embed in an organization's culture. However, this more effortful approach ultimately delivers a more robust and effective program in the long run. As an example, in many regulated spaces, government agencies require some form of employee training. The quickest and most cost-efficient way for an organization to satisfy this requirement is to acquire an "off the shelf" training

[8] Federal Trade Commission, "Mission," https://www.ftc.gov/about-ftc/mission.

program from a third-party vendor. The generic solution will not only be rapid to deploy and require less internal effort, but typically will also be considerably less costly than internally developed training. At the same time, such "off the shelf" products that are not customized to the particulars of an organization's culture and risks are prone to be viewed as "check the box" requirements by many employees. As a result, the training may fail to resonate with employees, and thereby fail to substantially mitigate the risk which drove the desire for training in the first place. In contrast, a more bespoke training program, while more costly and time-consuming to initially build and deploy, may ultimately be considerably more effective in ultimately achieving the desired employee behavior and reduction in risk.

Compliance programs are continually challenged and stressed due to changes in people, products, competition, regulatory environments, and macroeconomic conditions. Thus, compliance programs are living, breathing systems that must be dynamic.[9] A "best practice" program that is highly effective today may become wholly inadequate later if leadership is not attuned to the compliance demands associated with strategic and regulatory changes surrounding the organization as well as internal shifts in products and employee composition and expectations. As a result, effective compliance programs embody an organizational culture that embraces a philosophy that there is always more work to be done and that the program can always be improved upon. Complacency is the Achilles' heel of compliance.

To that end, strong, effective compliance programs are those in which the organization continually engages in efforts to understand whether new areas of risk have emerged, which compliance processes are no longer effective (and which are most effective), and where

[9] U.S. Dep't of Just. & Securities & Exchange Comm'n, "A Resource Guide to the U.S. Foreign Corrupt Practices Act" (2nd ed., July 2020), https://www.justice.gov/criminal-fraud/file/1292051/download, 56 (effective compliance programs "promote[] 'an organizational culture that encourages ethical conduct and a commitment to compliance with the law'").

opportunities for improvement exist.[10] This dynamic monitoring is not simply a risk assessment designed to understand whether new policies and procedures should be required, but also an evaluation of whether the execution of the compliance initiatives is designed to achieve the desired impact. To take the training example discussed above, an effective compliance program would assess whether the training being provided is appropriately designed to resonate with employees, and what can be done to further improve it. To the extent that developing a more effective, customized training program would be desirable, within an effective compliance program, managers are able to raise this request and are able to gain the additional resources, in the form of both personnel and financial resources, to better achieve the goal.

The notion that programs should be dynamic and have such a learning mentality has been widely recognized by regulators and enforcement agencies. For example, the DOJ and the SEC's guidance on the Foreign Corrupt Practices Act notes that compliance programs "are dynamic and evolve as the business and the markets change."[11] Likewise, the DOJ's guidance on the evaluation of corporate compliance programs explains that effective compliance programs "evolve[] over time to address existing and changing compliance risks."[12] That guidance continues, "[o]ne hallmark of an effective compliance program is its capacity to improve and evolve. The actual implementation of controls in practice will necessarily reveal areas of risk and potential adjustment."[13]

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[10] U.S. Sentencing Comm'n, Guidelines Manual 2023, § 8B2.1, 526, https://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2023/GLMFull.pdf (effective compliance programs are periodically evaluated for effectiveness).

[11] U.S. Dep't of Just. & Securities & Exchange Comm'n, "A Resource Guide to the U.S. Foreign Corrupt Practices Act" (2nd ed., July 2020), 56.

[12] U.S. Dep't of Just., Crim. Div., "Evaluation of Corporate Compliance Programs" (Updated Mar. 2023), https://www.justice.gov/criminal-fraud/page/file/937501/download, 15.

[13] U.S. Dep't of Just., Crim. Div., "Evaluation of Corporate Compliance Programs" (Updated Mar. 2023), 15.

The Order itself contemplates that Meta's Privacy Program should evolve and change over time. In particular, sub-part J of Part VII of the Order requires Meta to adjust the program if, among other things, a Covered Incident[14] occurs or other circumstances arise that Meta knows, or has reason to believe, may have a material impact on the effectiveness of the program. This provision of the Order envisages that Meta's Privacy Program be a dynamic program that continually improves over time rather than a static one. The Order's accommodation for the program to evolve and adapt is sensible given the extended 20-year term of the Order.

C. Effective Compliance Programs Are Expected to Both Identify and Remediate Gaps

Throughout my scholarly research, I have found that the basic count or frequency of a compliance program's gaps is not a useful indicator of how effective or ineffective the overall program is in achieving its goals.[15] Government agencies have similarly recognized that individual "gaps," even in some instances that result in or accompany misconduct, are not in themselves evidence of a lack of overall effectiveness.[16] For example, guidelines prepared by the U.S. Sentencing Commission state that an effective compliance and ethics program is one that is

[14] "Covered Incident" is defined in the Order to mean "any instance in which Respondent has verified or otherwise confirmed that the Covered Information of 500 or more Users was or was likely to have been accessed, collected, used, or shared by a Covered Third Party in violation of Respondent's Platform Terms." *See* Order, "Definitions."

[15] NIST Privacy Framework: A Tool for Improving Privacy Through Enterprise Risk Management (2020), https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.01162020.pdf, 12 (establishing a privacy program involves not only determining gaps but "creat[ing] a prioritized action plan to address gaps—reflecting mission drivers, costs and benefits, and risks").

[16] *See, e.g.*, U.S. Sentencing Comm'n, Guidelines Manual 2023, § 8B2.1 ("The failure to prevent or detect the instant offense does not necessarily mean that the program is not generally effective in preventing and detecting criminal conduct."); U.S. Dep't of Just., Crim. Div., "Evaluation of Corporate Compliance Programs" (Updated Mar. 2023), 3, 14 ("Prosecutors may credit the quality and effectiveness of a risk-based compliance program . . . even if it fails to prevent an infraction[;]" "[T]he existence of misconduct does not, by itself, mean that a compliance program did not work or was ineffective at the time of the offense. . . . [N]o compliance program can prevent all criminal activity by a corporation's employees."); U.S. Dep't of Just. & Securities & Exchange Comm'n, "A Resource Guide to the U.S. Foreign Corrupt Practices Act" (2nd ed., July 2020), 57 (an organization's "failure to prevent every single violation does not necessarily mean that [its] compliance program was not generally effective[,]" as companies are not held "to a standard of perfection").

"generally effective." The Sentencing Commission's guidance notes that individual gaps do not necessarily compromise the effectiveness of the program overall:

> "The failure to prevent or detect the instant offense does not necessarily mean that the program is not generally effective in preventing and detecting criminal conduct."[17]

While identifying individual compliance gaps may be useful for the purposes of identifying areas to improve and strengthen, there are several reasons why such gaps are not a reliable indicator of overall program ineffectiveness.

First, because compliance program needs are dynamic, even the best programs are by their nature imperfect and have gaps. All organizations have some opportunities for development and improvement—to address new risks, to foster greater impact, etc. The only way to achieve perfect compliance and entirely eliminate compliance risk is to cease to do business. Gaps that are identified as a result of a compliance program engaging in dynamic monitoring are generally a healthy sign of continual learning and improvement, rather than an indication of program ineffectiveness. Regulators in the compliance space have also emphasized that compliance programs should evolve based on lessons learned.[18] For instance, the CFTC offered the following guidance:

> "In general, identifying areas in need of improvement and recommending steps to effect those improvements should be a core function of compliance. Accordingly, a [Chief Compliance Officer ("CCO")] Annual Report that makes no recommendations for changes or improvements to the compliance program may raise concerns about the adequacy of the compliance program review intended by the CCO Annual Report process."[19]

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[17] U.S. Sentencing Comm'n, Guidelines Manual 2023, § 8B2.1, 525.

[18] U.S. Dep't of Just., Antitrust Div., "Evaluation of Corporate Compliance Programs in Criminal Antitrust Investigations" (July 2019), at 12 (citing the Justice Manual), https://www.justice.gov/atr/page/file/1182001/download.

[19] 17 C.F.R. Part 3, App'x C.

Consistent with this CFTC guidance, it is my view that a program where one cannot identify any opportunities for improvement is not one that should be viewed as effective, but instead likely one that is not being carefully evaluated and assessed.

Second, in practice, individual compliance processes, procedures and control mechanisms often interact with one another and the surrounding organizational culture in ways that mitigate compliance gaps.[20] For example, a compliance program with relatively weak monitoring and surveillance controls that nonetheless has a robust, high-quality "speak up" culture could be equally as effective as a program with stronger monitoring and surveillance controls and a less healthy "speak up" culture and function. Individual controls can buttress one another and strengthen the effectiveness of the compliance program overall.

Third, effective compliance programs take time to design, build, and implement. The existence of gaps in a program that is in the earlier stages of remediation should be distinguished from one with years of learning, optimization, and institutional support. Time is a critical ingredient for processes and initiatives to saturate an organization's culture and improve their operational effectiveness. It is therefore essential when evaluating a program's effectiveness to consider how much time has elapsed since compliance program remediation efforts began, how many new initiatives were launched, and whether the changes were minor design tweaks or foundational redesigns.

Fourth, it is widely accepted that organizations should address compliance program design in a risk-based manner. For example, the DOJ's evaluation of corporate compliance program memorandum "credit[s] the quality and effectiveness of a risk-based compliance program that

[20] U.S. Dep't of Just. & Securities & Exchange Comm'n, "A Resource Guide to the U.S. Foreign Corrupt Practices Act" (2nd ed., July 2020), 60 (regulators should credit an organization that "implements in good faith a comprehensive, risk-based compliance program, even if that program does not prevent an infraction in a low risk area because greater attention and resources had been devoted to a higher risk area").

devotes appropriate attention and resources to high-risk transactions[.]"[21] The basic principle underlying a risk-based approach is to prioritize compliance initiatives based on several criteria, including an assessment of severity and likelihood. Gaps that could result in significant harm (*e.g.*, manufacturing firms with significant supply chains at risk for human trafficking in frontier markets) deserve prioritization for compliance remediation as compared to addressing other known, but lower risks (*e.g.*, likelihood of foreign bribery in a business that is largely domestic and interacts with few government officials). Under a risk-based approach, higher-risk compliance concerns should be prioritized because of their nature, size, likelihood, expected impact, and, critically, the existence of additional mitigation controls and processes.

Fifth, individual gaps are less likely to be markers of overall program ineffectiveness in appropriately resourced programs. Designing robust, effective compliance programs within large multinational organizations requires significant resources. This encompasses not only the remediation effort's budget, but also the number and quality of employees available to implement and improve the compliance program, alongside any third-party resources available to monitor the compliance program.[22] A well-funded program can identify and respond to individual gaps more rapidly and effectively. The presence of gaps in an adequately resourced program, where significant resources are being deployed appropriately, actively, and fit for purpose,[23] is less likely to indicate overall program ineffectiveness. On the other hand, if gaps are not remediated as the

[21] U.S. Dep't of Just., Crim. Div., "Evaluation of Corporate Compliance Programs" (Updated Mar. 2023), at 3.

[22] Federal Reserve Board, SR 95-51 (SUP): "Rating the Adequacy of Risk Management Processes and Internal Controls at State Member Banks and Bank Holding Companies" (rev. Feb. 26, 2021), 6 (risk management at large organizations "will naturally require frequent monitoring and testing by independent control areas and internal, as well as external, auditors to ensure the integrity of the information used by senior officials in overseeing compliance with policies and limits").

[23] U.S. Dep't of Just., Crim. Div., "Evaluation of Corporate Compliance Programs" (Updated Mar. 2023), 9 (an adequately resourced compliance program is "implemented, resourced, reviewed, and revised, as appropriate, in an effective manner").

result of an organization failing to devote sufficient resources to their compliance efforts, this signals that the overall compliance program is less likely to be an effective one.

Ultimately, continual improvement through the identification and remediation of gaps is a necessary and expected occurrence in an effective compliance program. The five criteria outlined above—adaptability, control complementarity, timing, risk-based prioritization, and adequate resourcing—are criteria to evaluate an organization's approach to remediating gaps in its compliance program. When these criteria are taken into consideration, the capacity to rapidly and proactively remediate gaps as they are identified can often be interpreted as a sign of program effectiveness, especially as a program is being built. Thus, while the Order required the Assessor to identify any gaps or weaknesses in Meta's Privacy Program, such gaps cannot, when examined in isolation, be relied upon to draw a conclusion about the overall effectiveness of the program.

V. EVALUATION AND INTERPRETATION OF THE ASSESSOR'S INITIAL REPORT FINDINGS

A. Meta Established the Foundations of a Comprehensive and Effective Privacy Compliance Program

As I outlined above, Part VII of the Order required Meta to establish, implement, and thereafter maintain a comprehensive Privacy Program. To fulfill this overarching obligation, the Order specified a series of components that Meta was required to implement within 180 days of the effective date of the Order. In order to supervise Meta's compliance with Part VII, the Order required an independent Assessor to conduct periodic reviews of the Privacy Program, including an assessment of the "effectiveness of [Meta's] implementation and maintenance of each subpart in Part VII of [the] Order[.]"[24]

[24] Order, Part VIII.D.

In my opinion, and consistent with the Assessor's own opinion, Meta had established the foundations of a comprehensive and effective privacy compliance program at the time of the Initial Report. Specifically, the Assessor stated in its summary of its Initial Report findings that "the key foundational elements necessary for an effective program [were] in place, although their maturity and completeness var[ied] [redacted] [,]"[25] and that the [redacted] into which the program is organized is logical and appropriately comprehensive."[26]

Like the Assessor, I also believe there are numerous areas for further enhancement and improvement in Meta's program. However, the presence of these individual gaps and opportunities for improvement is neither inconsistent with, nor undermines, the basic observation that the key foundational elements necessary for a comprehensive and effective program were in place at the time of the Initial Report. Several factors inform my opinion.

First, Meta had invested significant resources to lay the foundations of its privacy compliance program. There is no indication in the Initial Report that Meta was overlooking or actively ignoring any privacy risk areas given the significant resources dedicated to its program. As the Assessor noted, by October 25, 2020, Meta had implemented [redacted] safeguards, with [redacted] additional safeguards implemented during the Assessment Period.[27] These safeguards were supported by more than [redacted] privacy governing documents and approximately [redacted] privacy focused policies, procedures, tools, templates, and guidelines.[28] Meta also dramatically expanded the number of privacy-dedicated employees. At the date of the Assessor's Initial Report, Meta had more than [redacted] employees dedicated to its Privacy Program, with budget-approved plans to add an

[25] Initial Report at 3.
[26] Initial Report at 3.
[27] Initial Report at 15.
[28] Initial Report at 15.

additional [redacted] resources by 2021 year-end (up from approximately [redacted] employees in mid-2019).[29] As the Assessor noted, Meta had made "extensive investments" to its Privacy Program.[30]

Second, Meta's significant resourcing investment in its Privacy Program meant it was well-positioned to rapidly respond to areas identified by the Assessor. Even during the Initial Assessment Period of only six months, according to the Assessor's observations, Meta took steps to address [redacted] categories of gaps identified by the Assessor, indicative of a dynamic and responsive compliance program. Evidence of Meta's capacity to rapidly remediate gaps, as described in numerous instances in the Assessor's report, should be interpreted as a sign of the program's adaptability and effectiveness. I discuss the specific gaps which Meta was able to remediate or actively address during the Initial Assessment Period in detail in the next section below. As the Initial Report reflects, between the issuance of the Order and the start of the Initial Assessment Period, Meta was simultaneously engaged in the concurrent process of rebuilding and evaluating its Privacy Program.[31] Meta's need to adapt and implement the Privacy Program while continuing to operate *and* comply with the requirements of the Order resulted in a complex process of simultaneous planning, management, execution, and evaluation. While Meta may have chosen to approach this differently if not as constrained by time, this approach also offered the benefit of giving the Assessor the ability to see how Meta responded to "real time" feedback as it implemented and improved processes. The Initial Report itself notes numerous instances in which

[29] Initial Report at 2.
[30] Initial Report at 3.
[31] Initial Report at 2 (Meta [redacted]).

Meta responded to the Assessor's feedback with appropriate haste, which is indicative of an effective compliance program that appropriately adapts to improvement opportunities.[32]

Third, many of the gaps identified in the Initial Report resulted from Meta's "decision to comprehensively redesign the privacy organizational structure, program materials, and Safeguards [redacted][33] This design (the "Redesign Decision") "in effect, created a new Privacy Program[.]"[34] Based on my experience and expertise, a fundamental, top-to-bottom redesign of any corporate process takes a greater period of time to accomplish than merely tweaking or amending an already-existing program. In my experience, while a complete redesign of a compliance program may result in a greater number of gaps in the short term, this approach tends to produce a stronger, more robust, and more effective program in the longer run. In my opinion, Meta's Redesign Decision places it in a considerably stronger position to not only sustain the Privacy Program required by the Order, but ultimately is producing an even more comprehensive and effective Privacy Program, benefiting consumers and the broader public alike. To the extent that the Redesign Decision contributed to the existence of individual gaps in the Privacy Program at the time of the Initial Report, it is my opinion that this does not indicate the program was ineffectively designed.

Fourth, several gaps in various categories were mitigated by other controls (*e.g.*, where Meta was relying on employee judgment or manual processes, it is likely that Meta's training efforts would mitigate risk). The presence of complementary processes and initiatives that support

[32] For example, the Assessor [redacted], and noted that Meta [redacted] *See* Initial Report at 158.
[33] Initial Report at 2.
[34] Initial Report at 15.

one another offers further comfort that the overall foundation of the program, when viewed in its totality, is effective.[35]

Together, these factors support my conclusion that the gaps identified by the Assessor in its First Report are not indicative of an ineffective privacy program. In this way, these gaps do not detract from the Assessor's ultimate conclusion, which I share, that the foundations of an effective program were in place across the domains at the time of the Initial Report. Therefore, in my opinion, Meta had established the key foundations of a comprehensive and effective privacy compliance program at that time, and did not violate the objectives of the Commission's Order.

B. Meta Established Effective Foundations Across the Domains

In this section, I provide a high level summary of the Assessor's findings across each domain which informed its overall conclusion that Meta had put in place the key foundational elements necessary for an effective program and had structured the program in a logical and comprehensive manner. The Assessor's findings across each domain support my opinion that Meta had established the foundations of a comprehensive and effective Privacy Program at the time of the Initial Report.

In the context of the first domain, Internal Policy and Procedures, the Assessor found that Meta's [redacted][36] [redacted]

[35] For example, the Assessor observed [redacted] *See* Initial Report at 139.

[36] Initial Report at 18.

[redacted].[37] According to the Assessor, [redacted] [38] during the testing of this domain.

In relation to the second domain, the Governance Control Domain, the Assessor found that Meta had established two independent privacy-related committees of Meta's Board of Directors, as well as related supporting activities associated with governance oversight of the Privacy Program such as [redacted] [39] The Assessor concluded that [redacted] [40]

The Assessor's evaluation of the Training, Awareness, and Communication Control Domain was focused on whether Meta's [redacted] The Assessor found that [redacted] Meta personnel had not completed training in a timely manner.[41] This equates to a completion rate of [redacted]. In my opinion, while completion and enforcement is one important aspect of this domain, the quality of training is also critical and was not discussed by the Assessor. It has been widely reported that Meta's trainings are high quality, the result of a deployment of significant resources, and have resulted in employee engagement, including "viral memes and impromptu watch parties."[42] The

[37] Initial Report at 18.
[38] Initial Report at 18.
[39] Initial Report at 20.
[40] Initial Report at 23–24.
[41] Initial Report at 29.
[42] Dylan Tokar, "How Meta Uses Netflix-Style Videos to Get Engineers Thinking About Compliance," *Wall Street Journal* (May 18, 2023), https://www.wsj.com/articles/how-meta-uses-netflix-style-videos-to-get-engineers-thinking-about-compliance-496d2293; *see also* Dylan Tokar, "Microsoft Employees Are Hooked on the Company's

overall quality of Meta's training program, combined with a high completion rate, indicate that Meta has established the effective foundational elements of this domain.

In relation to the Complaints & Issue Management Control Domain, [redacted], the Assessor found that, [redacted][43]

Turning to the Risk Assessment and Remediation Domain, the Assessor explained that, [redacted]. The Assessor noted that Meta made this decision [redacted] The Assessor noted that this simultaneous process [redacted][44]

The Assessor examined the Compliance Monitoring, Enforcement, and Reporting ("CMER") Domain, [redacted] The Assessor found that Meta had [redacted][45]

Regarding the Privacy Review Control Domain, the Assessor [redacted]

Training Videos," *Wall Street Journal* (May 10, 2023), https://www.wsj.com/articles/microsoft-employees-are-hooked-on-the-companys-training-videos-c8684a1.

[43] Initial Report at 36.

[44] Initial Report at 43.

[45] Initial Report at 59.

[redacted][46] The Assessor noted Meta's deployment of significant resources in support of this domain, including employment of [redacted] and conducting [redacted] quarterly.[47] This demonstrates Meta's significant commitment to implementing the effective foundational elements of this domain.

The Assessor considered Meta's Data Life Cycle Management Control Domain, which [redacted][48] The Assessor found that the first two were [redacted]"[49] The Assessor noted that the [redacted][50] I discuss this in further detail below.

In relation to the Incident Management Domain, the Assessor found that Meta [redacted][51] The Assessor noted that [redacted]

[46] Initial Report at 73.
[47] Initial Report at 73.
[48] Initial Report at 90.
[49] Initial Report at 93.
[50] Initial Report at 93.
[51] Initial Report at 109.

[redacted] These issues did not detract from the Assessor's overall conclusion that Meta had established the [redacted]

The Assessor found that Meta had established [redacted] safeguards across the Security for Privacy Control Domain. The Assessor noted that the [redacted][52] The Assessor observed that Meta had implemented [redacted][53] The Assessor [redacted][54] It is unsurprising that safeguards related to a new technological process were less mature. There was no suggestion from the Assessor that Meta was overlooking [redacted]. Indeed, the Initial Report conveys that Meta was actively working to improve this area.

The Assessor observed that the Transparency, Notice, and Choice ("TNC") Control Domain includes [redacted] safeguards, [redacted].[55] The Assessor concluded that Meta [redacted]"[56] The Assessor noted that [redacted]

[52] Initial Report at 120.
[53] Initial Report at 114.
[54] Initial Report at 120.
[55] [redacted] *See* Initial Report at 124.
[56] Initial Report at 128.

[redacted][57] The identification of these individual gaps did not detract from the Assessor's overall conclusions.

Finally, the Assessor reviewed Meta's Third Party Risk Management Domain, [redacted] The Assessor found Meta had implemented [redacted] safeguards and planned [redacted] more at the time of the Initial Report, reflecting the importance and sensitivity of this area.[58] Overall, this was [redacted].[59] The Assessor's description of the issues at play conveys the technical complexity and sheer volume of information involved. Given the ground-up approach that Meta took, flowing from the Redesign Decision, this is unsurprising. There is no indication from the Initial Report that Meta has devoted insufficient resources or attention towards resolving the concerns identified by the Assessor across this domain. [redacted][60] Accordingly, this is the largest area of the Privacy Program for additional maturation, but the Initial Report does suggest that Meta is addressing gaps with the speed and attentiveness of a still maturing, but effectively directed compliance program.

In my reading of the Report, the Assessor's key findings across each domain summarized above informed its overall conclusion that Meta had put in place the foundational elements necessary for an effective Privacy Program and had structured the program in a logical and

[57] Initial Report at 128.
[58] Initial Report at 134.
[59] Initial Report at 150.
[60] Initial Report at 150.

comprehensive manner. These findings, together with the additional information in relation to training, support my opinion that Meta had established the foundations of a comprehensive and effective Privacy Program at the time of the Initial Report. In the next section, I will turn to the individual gaps identified by the Assessor in each domain.

C. Meta Took a Responsive and Appropriately Risk-Based Approach to Remediating Gaps Identified by the Assessor

In its initial report, the Assessor identified [redacted] in Meta's Privacy Program of various significance across all [redacted].[61] The Assessor then categorized these gaps and weaknesses into [redacted] different categories in the Initial Report. For ease of reference, I have adopted the category names used in the Initial Report where relevant.

As I explained above, the Initial Report indicates that Meta quickly and substantively addressed several categories of gaps identified by the Assessor during the Initial Assessment Period. The speed with which Meta responded to various issues identified by the Assessor during that initial six-month period is apparent from the Initial Report. Notably, in some instances, remediation steps were implemented by Meta with such pace that they could be validated by the Assessor during the Initial Assessment Period. Other steps taken by Meta to address gaps identified were implemented during the Initial Assessment Period, but still required subsequent validation by the Assessor. As I outlined earlier, even the most mature and effective program has gaps. It is often useful to examine how a company identifies and responds to such gaps to understand its program's effectiveness. Moreover, a mature, effective compliance program cannot be developed overnight. An assessment of gaps identified in a compliance program must take into account the five criteria I described above—adaptability, control complementarity, timing, risk-based prioritization, and adequate resourcing. In my opinion, Meta's efforts to implement

[61] Initial Report at 3.

initiatives addressing gaps identified during the Initial Assessment Period are signs of an effective program overall.

1. Gaps Addressed During the Initial Assessment Period

According to the Initial Report, Meta took steps during the Initial Assessment Period to address the following [redacted] identified by the Assessor, across the various domains:

Domain	Gaps Addressed During the Initial Assessment Period
Governance Domain	[redacted]
Complaints & Issue Management Domain	
Privacy Review Domain	
Data Life Cycle Management Domain	
Transparency, Notice, and Choice Domain	

[62] Initial Report at 24.
[63] Initial Report at 25.
[64] Initial Report at 39.
[65] Initial Report at 78-81, 83.
[66] Initial Report at 85-88.
[67] Initial Report at 96.
[68] Initial Report at 98-99.
[69] Initial Report at 129-30.
[70] Initial Report at 130-32.

Domain	Gaps Addressed During the Initial Assessment Period
Third Party Risk Management Domain	

[71] Initial Report at 154-57.
[72] Initial Report at 158.
[73] While this gap was remediated after the date of the Initial Report, I have treated it as falling within this category. The Assessor noted that Meta had until October 2021 to rectify the issue in order to comply with the Order. The First Biennial Report notes that this gap was addressed within the requisite time frame. *See* Initial Report at 152-53.
[74] Initial Report at 158-59.
[75] Initial Report at 159-60.
[76] Initial Report at 160.
[77] Initial Report at 160-61.
[78] Initial Report at 161.
[79] Initial Report at 161.
[80] Initial Report at 161-62.

The Assessor was able to validate actions taken to address [redacted] of these gaps during the Initial Assessment Period itself. With respect to the remaining [redacted] gaps which Meta took steps to address during the Initial Assessment Period, the Assessor was able to confirm in its First Biennial Report that Meta had undertaken remediation actions to address such gaps.[81] The speed with which Meta was able to address these gaps indicates the program's adaptability and considerable resourcing.

D. Remaining Gaps Were Not Indicative of Overall Program Ineffectiveness

Below I offer my own assessment of the remaining [redacted] gaps identified by the Assessor during the Initial Assessment Period. Employing the five criteria I described above—adaptability, control complementarity, timing, risk-based prioritization, and adequate resourcing—I have assessed whether, in my opinion, these remaining gaps suggest that Meta's Privacy Program was not effective at the time of the Initial Report. Overall, I consider the individual gaps and Meta's resource allocation and prioritization to address these gaps identified in the Initial Report to be consistent with my expectations for a maturing program. The presence of such gaps does not detract from my overall conclusion that Meta had established the foundations of an effective and comprehensive Privacy Program at the time of the Initial Report.

1. Internal Policy and Procedures

The Assessor identified [redacted] gap areas related to Internal Policy and Procedures through the testing of other domains:

[81] As is to be expected, and was contemplated by the Order, the Assessor identified additional gaps during the second assessment period.

[redacted]

The Assessor noted areas where the [redacted] Applying a risk-based approach, such gaps [redacted] can generally be considered comparatively lower risk. This area should be viewed as an opportunity for further improvement, rather than an indication of program ineffectiveness due to oversight or lack of effort.

[redacted]

The Assessor identified that [redacted] However, the Assessor noted that, [redacted][82] This observation suggests that Meta was taking appropriate steps to implement the necessary safeguards, but still building the internal capacity to [redacted] in a comprehensive manner.

Based on my application of several criteria (*i.e.*, risk-based prioritization, control complementarity, and timing), in my view, while there are areas for improvement where [redacted] these [redacted] issues do not suggest that this domain was ineffective at the time.

2. Governance

The Assessor identified [redacted] areas for further improvement where safeguards in the Governance domain were not achieving their full functionality. [redacted] of these areas were already addressed by Meta during the Initial Period. [redacted] As required by Part VII.I of the

[82] Initial Report at 19.

Order, Meta gathered feedback from external experts about the establishment, implementation, maintenance, and update of its Privacy Program. The Assessor noted that [redacted][83] Thus, in my opinion, Meta complied with the Order's requirement that it consult with outside experts. [redacted] would represent further development of this initiative to align with Meta's own policies, but, applying the timing criterion, its absence should not be viewed as evidence of ineffectiveness across this domain.

3. Training, Awareness, and Communication

The Assessor's evaluation of this domain revealed [redacted] gaps:

[redacted]

The Assessor determined that Meta's [redacted] In particular, the Assessor found that [redacted] Meta personnel had not completed training in a timely manner.[84] This equates to a [redacted] completion rate. Applying a risk-based approach, while Meta should naturally seek full training completion and appropriate enforcement, this gap in training completion is comparably low risk, as the proportion of personnel was very low, [redacted].[85] In my experience, reaching a generalized completion rate in excess of 95% is viewed as a success in the compliance field.[86] In addition, a

[83] Initial Report at 24.
[84] Initial Report at 29.
[85] Initial Report at 29 nn. 6-7.
[86] *See* Phoebe Larson, "Completion Rate Trends and How To Get There," Rethink Compliance (March 29, 2023), https://www.rethinkcomplianceco.com/resources/completion-rate-trends-and-how-to-get-there#:~:text=To%20Get%20There-

rate in excess of 95% is generally viewed as particularly successful if those who have not completed the training are employees who pose the lowest on average risk (*e.g.*, do not have sensitive systems access). Moreover, as I noted above, while completion and enforcement is one important aspect of this domain, the quality of training is also critical and not discussed by the Assessor. It has been widely reported that Meta's trainings are high quality, the result of a deployment of significant resources, and have resulted in employee engagement, including "viral memes and impromptu watch parties."[87] In my opinion, when the overall quality of Meta's training program is taken into account (reflecting the adequate resourcing criterion), combined with the high completion rate, it should be regarded as effective. The presence of a small proportion of Meta personnel who did not receive training does not render the program ineffective.

[redacted]

The Assessor observed that [redacted][88] The Initial Report noted that Meta was already planning enhancement to [redacted].[89] My experience observing the deployment of training across many multinational, multi-product companies has invariably shown that [redacted] It is an area that requires continued attention and revision over time. Thus, applying the criteria of adaptability, timing, and risk-based prioritization, Meta's efforts to further enhance the deployment and oversight of its

,It%27s%20an%20age%2Dold%20compliance%20question%3A%20What%20is%20an%20acceptable,closer%20to%20100%25%2C%20too.

[87] Dylan Tokar, "How Meta Uses Netflix-Style Videos to Get Engineers Thinking About Compliance," *Wall Street Journal* (May 18, 2023), https://www.wsj.com/articles/how-meta-uses-netflix-style-videos-to-get-engineers-thinking-about-compliance-496d2293; *see also* Dylan Tokar, "Microsoft Employees Are Hooked on the Company's Training Videos," *Wall Street Journal* (May 10, 2023), https://www.wsj.com/articles/microsoft-employees-are-hooked-on-the-companys-training-videos-c8684a1.

[88] Initial Report at 30.

[89] Initial Report at 30.

[redacted] are consistent with a maturing, risk-based program. I do not see the Assessor's observation as indicating that Meta's approach to training was ineffective at the time of the Initial Report.

4. Complaints & Issue Management

The Assessor identified [redacted] areas for improvement in the Complaints & Issue Management Control Domain, [redacted] of which was already addressed by Meta in the Initial Assessment Period. The remaining areas related to the level of operational excellence, and, in my opinion, should not be regarded as evidence of overall program ineffectiveness.

[redacted]

The Assessor reported that [redacted][90] Applying a risk-based approach, the Assessor's testing results suggest that the risk posed by the [redacted] did not materialize and thus is lower risk.

[redacted]

After it acquired WhatsApp, Meta [redacted][91] Applying the timing and risk-based prioritization criteria, this gap relates to an opportunity to improve [redacted]

[90] Initial Report at 37.
[91] Initial Report at 38.

[redacted] In view of the Assessor's overall finding that [redacted] I consider this issue to be better characterized as an opportunity for further improvement, rather than a gap that undermines the overall effectiveness of the program.

[redacted]

The Assessor noted that the [redacted][92] [redacted] In my experience, this is a sign of a relatively strong compliance culture, as "speak up" comfort is one of the common challenges faced within weak compliance cultures. [redacted] In this context, applying a risk-based approach and in light of control complementarity, I consider this area of potential [redacted] to be comparably low-risk and thus not an issue that would undermine the overall effectiveness of Meta's Privacy Program.

5. Risk Assessment and Remediation

The Assessor identified [redacted] areas of improvement in this domain that would better [redacted] The areas of improvement identified by the Assessor are, in my opinion, to be expected in view of [redacted]. Applying the criteria

[92] Initial Report at 38.

of adaptability, timing, and risk-based prioritization, they should not be regarded as evidence of program ineffectiveness.

[redacted]

The Assessor found that Meta had an opportunity to further mature the development of [redacted] Despite this area of improvement, the Assessor noted that it [redacted][93] The First Biennial Report notes that Meta [redacted].[94]

[redacted]

The Assessor found that Meta [redacted][95] In my opinion, this is a direct result of the simultaneous and rapid building of the Privacy Program; a more natural sequencing that did not involve the time pressure associated with the Order likely would have mitigated this gap. The First Biennial Report notes that Meta took steps to address this gap for the 2021 PRA and made further enhancements relating to this gap for the 2022 PRA.[96]

[93] Initial Report at 44.
[94] First Biennial Report at 60.
[95] Initial Report at 44.
[96] First Biennial Report at 60.

[redacted][97] [redacted][98] [redacted] I have supported and developed risk scoring methodologies for a number of companies and, in my opinion, they require considerable development time and have deep normative judgments that require internal discussion and debate that requires time. In my opinion, while Meta certainly had room to improve [redacted] at the time of the Initial Report, Meta has laid the necessary foundation for this assessment and reevaluation to occur as the program naturally matures with time.

[redacted]

The Assessor observed that Meta [redacted][99] The Assessor [redacted][100] [redacted] In response to the Assessor's observations, as well as self-identified opportunities for improvement in this area, Meta developed

[97] Initial Report at 45.
[98] Initial Report at 45-48.
[99] Initial Report at 48.
[100] Initial Report at 49.

plans to substantively enhance its [redacted][101] This proactive response to gaps identified by both the Assessor and Meta themselves, in my opinion, is demonstrative of an effective program that is continually learning and improving.

[redacted]

The Assessor identified that Meta [redacted][102] Timely revision following the [redacted] can be regarded as an area for improvement as the program continues to mature.

[redacted]

The Assessor noted that Meta [redacted][103] [redacted][104] [redacted][105] My assessment is that Meta had put in place the foundations of [redacted] at the time of the Initial Report. The issue identified by the Assessor represents an opportunity for improvement as the program continues to develop, but not program ineffectiveness.

[101] Initial Report at 49.
[102] Initial Report at 49-50.
[103] Initial Report at 50.
[104] Initial Report at 50.
[105] Initial Report at 50.

[redacted]

The Assessor identified that [redacted] This suggests that [redacted] is an area of improvement, but not a widespread practice that would indicate program ineffectiveness.

6. Compliance Monitoring, Enforcement, and Reporting

The Assessor identified [redacted] gaps in the Compliance Monitoring, Enforcement, and Reporting domain. Applying the timing and risk-based prioritization criteria, these gaps are not, in my opinion, evidence of overall program ineffectiveness.

[redacted]

The Assessor noted that [redacted].[106] [redacted][107] [redacted][108] This is to be expected given [redacted] prior to the Initial Assessment Period. There was no indication in the Initial Report that the potential risk identified by the Assessor materialized. In my opinion, this gap should not be regarded as evidence of program ineffectiveness.

[106] Initial Report at 59.
[107] Initial Report at 60.
[108] Initial Report at 60.

[redacted]

The Assessor found that [redacted][109] [redacted][110] [redacted][111] However, the Assessor's sample analysis suggests that any risk of [redacted] was comparably low. The Assessor observed that [redacted] In my opinion, this gap is a reflection of Meta's need to align the Privacy Program on paper with practice, but not an indication of overall program ineffectiveness.

[redacted]

The Assessor noted that Meta's Quarterly Privacy Review Report [redacted][112] [redacted] In light of the significant informational access which the Assessor had in order to independently assess privacy risks within Meta, the actual risk this gap posed to consumer privacy can reasonably be viewed as comparably low. In my opinion, the quarterly report should be characterized as an opportunity for more depth and transparency.

[109] Initial Report at 61.
[110] Initial Report at 61.
[111] Initial Report at 61.
[112] Initial Report at 52-63.

7. Privacy Review

The Assessor identified [redacted] gaps in the Privacy Review Domain that related to its view that the [redacted][113] Meta took steps to address two of these gaps during the Initial Assessment Period.[114] [redacted] The Assessor noted that Meta [redacted][115] Applying a risk-based approach, there is no suggestion in the Initial Report that this issue manifested in a material privacy risk. Applying the control complementarity criterion, employee training acted as a complement to mitigate such risks. Further, the Initial Report notes that [redacted][116] Applying the timing and risk-based prioritization criteria, in my opinion, this gap should be characterized as an opportunity to enhance consistency and further formalize and embed the Privacy Review process as Meta's Privacy Program matures, rather than evidence of program ineffectiveness.

8. Data Life Cycle Management

The Assessor identified [redacted] gaps in the Data Life Cycle Management Domain. As I noted above, Meta was already taking steps to address [redacted] of these gaps as of the date of the Initial Report.[117] The remaining gaps are, in my opinion, not to be taken as signs of program ineffectiveness, but instead as indicators of the continued development and progress of the program.

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[113] Initial Report at 73.
[114] Initial Report at 78-89.
[115] Initial Report at 74-75.
[116] Initial Report at 75-76.
[117] Initial Report at 93-94.

[redacted]

Meta was continuing to improve [redacted][118] [redacted][119] Applying a risk-based approach and the adequate resourcing criterion, I see these gaps as opportunities for further program enhancement rather than as indicators of program ineffectiveness.

[redacted]

The Assessor identified that Meta should [redacted][120] Meta indicated to the Assessor that it was already planning steps to remediate this issue during the Initial Assessment Period.[121] Specifically, the Initial Report indicated that Meta was working to [redacted].[122] Applying the criteria of adaptability, timing, risk-based prioritization, and adequate resourcing, Meta's attention to this

[118] Initial Report at 95.
[119] Initial Report at 95. [redacted] *See* Initial Report at 228.
[120] Initial Report at 97-98.
[121] Initial Report at 98.
[122] Initial Report at 93-94, 98. [redacted] *See* Initial Report at 228.

area is indicative of its efforts to remediate in a timely manner. The underlying gap does not detract from my overall conclusion that Meta has established the foundations of an effective program that is continuing to mature and develop.

[redacted]

The Assessor noted that [redacted][123] [redacted][124] Applying the criteria of risk-based prioritization and adequate resourcing, in my opinion this is an opportunity for Meta to [redacted] but it should not be regarded as evidence of program ineffectiveness.

The Assessor also identified an issue relating to the [redacted] but noted that the risk here was comparatively low.[125] The Assessor's assessment here is an example of Meta engaging in the risk-based program design approach that I described above, and is not evidence that the program is ineffective.

9. Incident Management

The Assessor noted that [redacted] The [redacted] gaps identified by the Assessor in this domain should not, in my view, be treated as indicators of overall program ineffectiveness.

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[123] [redacted] *See* Initial Report at 227.

[124] Initial Report at 93-94.

[125] Initial Report at 100.

[redacted]

The Assessor found that this sub-domain [redacted][126] In my opinion, this concern was comparably low risk and the Assessor noted that Meta was already planning several steps to address it as of the Initial Assessment Period.[127] The First Biennial Report indicates that this occurred.[128] Meta's capacity to effectively and efficiently respond to identified gaps is consistent with an effective program.

[redacted]

The Assessor noted that [redacted][129] This created a risk that [redacted] The Assessor further noted that Meta [redacted][130] Applying the criteria of adaptability and adequate resourcing, Meta's attention to this area is indicative of its efforts to timely remediate gaps, consistent with an effective program.

[redacted]

The Assessor found [redacted].[131] The vast majority of [redacted] indicating that this was more of an anomaly than a prevalent issue and therefore comparably lower-risk. Applying a risk-based approach, this gap

[126] Initial Report at 110.
[127] Initial Report at 111.
[128] First Biennial Report at 131-32.
[129] Initial Report at 112.
[130] Initial Report at 112.
[131] Initial Report at 112.

should not, in my view, be treated as an indicator of overall program ineffectiveness. In response, Meta reported that it planned to improve this process in the second half of 2021.[132] The First Biennial Report indicates that this occurred.[133]

[redacted]

The Assessor noted that [redacted].[134] This issue affected only [redacted] I expect issues regarding [redacted] to continue to improve as the Privacy Program matures. Applying the criteria of timing and risk-based prioritization, this issue should not, in my view, be treated as an indicator of overall program ineffectiveness.

[redacted]

[redacted].[135] Again, the issue affected a very small proportion of samples which the Assessor tested. Meta responded that it intended [redacted][136] The First Biennial Report indicates that Meta made enhancements [redacted][137] Applying the criteria of adaptability and risk-based prioritization, this gap should not, in my view, be treated as a sign of overall program ineffectiveness.

[132] Initial Report at 112.
[133] First Biennial Report at 124.
[134] Initial Report at 112.
[135] Initial Report at 113.
[136] Initial Report at 113.
[137] First Biennial Report at 131-32.

10. Security for Privacy

The Assessor noted that [redacted][138]

The Assessor [redacted][139] It is unsurprising that safeguards related to a new technological process were less mature. However, I do not consider the comparable immaturity [redacted] to detract from my conclusion above that the foundational elements of this domain are in place. Applying the control complementarity criterion, I note the Assessor's observation that Meta "maintains [redacted] of complimentary [sic] processes and procedures throughout the organization to manage security risks as part of their Comprehensive Information Security Program (e.g., physical security, penetration testing, firewalls, disaster recovery, asset management, etc.)," which were outside the scope of the Initial Assessment.[140]

With respect to the gap relating to the [redacted], the Assessor identified that [redacted].[141] In my opinion, this was a more obvious gap that Meta should have been addressing, notwithstanding that the Assessor did not identify evidence of any actual abuse. Nevertheless, applying the control complementarity criterion, this is an area

[138] Initial Report at 120.
[139] Initial Report at 120.
[140] Initial Report at 114.
[141] Initial Report at 121-22.

where robust privacy training for employees, which Meta has developed, would mitigate the risk of abuse.

11. Transparency, Notice, and Choice

The Assessor noted that [redacted][142] Meta took steps to address [redacted] of the issues during the Initial Assessment Period. The remaining [redacted] categories of improvement were as follows:

[redacted]

Meta had a process in place for [redacted] The Assessor noted that [redacted][143] In my opinion, applying the timing and risk-based prioritization criteria, the fact that Meta had established a process that was operating in practice indicates that the effective foundations of this control were in place.

[redacted]

The Assessor noted an additional gap regarding [redacted][144] In my opinion, applying a risk-based

[142] Initial Report at 128.
[143] Initial Report at 132.
[144] Initial Report at 133.

approach, this gap can be regarded as comparably lower-risk and therefore should not be viewed as evidence of program ineffectiveness.

12. Third-Party Risk Management

As I noted above, the Third-Party Risk Management Domain was [redacted]. The Assessor stated it found gaps across the safeguards.[145] The Assessor's description of the issues conveys the technical complexity and sheer volume of information involved. Applying the adequate resourcing criterion, there is no indication that Meta has devoted insufficient resources or attention towards resolving the concerns identified by the Assessor across this domain. [redacted][146] Accordingly, this is the [redacted] that requires maturing, but the Initial Report suggests that Meta is addressing gaps with the speed and attentiveness of an effectively directed compliance program.

To review the additional gaps identified by the Assessor during the Initial Assessment Period:

[redacted]

Meta had a policy to [redacted][147] A [redacted] but, applying the criteria of risk-based prioritization

[145] Initial Report at 150.
[146] Initial Report at 150.
[147] Initial Report at 153.

and timing, the absence of this does not, in my opinion, suggest that Meta's program was ineffective.

[redacted]

While Meta had a process in place to [redacted].[148] The First Biennial Report notes that Meta made improvements and complied with the Order.[149]

[redacted]

The Assessor stated that Meta [redacted].[150] The Assessor identified [redacted].[151] In my opinion, this gap is an opportunity for improvement and refinement in a comparatively lower-risk area, applying a risk-based approach. The First Biennial Report noted that Meta remediated [redacted] highlighting the adaptability of its program.[152]

Furthermore, the Assessor identified [redacted] additional gaps not related to a particular theme or category. [redacted] were at various stages of remediation at the time of the Initial Report, reinforcing Meta's program adaptability. [redacted]

[148] Initial Report at 150, 153.
[149] First Biennial Report at 185.
[150] Initial Report at 157.
[151] Initial Report at 157.
[152] First Biennial Report at 185. [redacted] *See* First Biennial Report at 190-91.

[redacted][153] In my opinion, by putting in place safeguards [redacted], Meta had established the foundational elements of this control. Applying the timing criterion, the gap identified by the Assessor is more aptly characterized as an opportunity for further improvement.

VI. CONCLUSION

In view of the above, out of the [redacted] in Meta's Privacy Program, there were many areas of significant development resulting from the Redesign Decision, which, while more challenging in the short-run, will result in a stronger and more robust program in the long run. The Initial Report reflects Meta's deployment of significant resources, including but not limited to: employment of [redacted] of privacy reviews quarterly; a significant increase in privacy team headcount; and the deployment of a wide array of new safeguards. As noted earlier in this report, the Assessor did not find that Meta was actively ignoring, overlooking, or under resourcing any of the domains.[154]

The areas described as gaps in the Initial Report largely reflect the comparative maturity of a newly designed compliance program which, notwithstanding deployment of the resources above, was at an appropriate stage of evolution in view of the time frame at issue and the Redesign Decision. While certain key areas of opportunity were identified (*e.g.*, [redacted]), the Assessor noted that Meta was making progress and that its attention and focus were appropriately directed.

[153] Initial Report at 160.
[154] *See* n.33 above.

In my opinion, the individual gaps and weaknesses identified in the Initial Report are consistent with a maturing, effective compliance program and, based on the resources being deployed, one that is likely to become best in class. An effective compliance program is one in which areas of improvement are continually identified and built out, and the process of building an increasingly effective program is not linear. The Assessor's observations in the First Biennial Report suggest that progress has continued, and indeed accelerated in some areas, since the Initial Report. The First Biennial Report notes that "effectiveness and maturity of the control environment has notably improved."[155] Importantly, the First Biennial Report indicates that in general Meta [redacted] addressed the gaps raised in the Initial Report and concentrated on "addressing the most critical operational Gaps identified in the Initial Assessment," reflecting a risk-based approach.[156] The First Biennial Report also cited Meta's efforts to improve the program through "necessary investments in people and technology" and progress towards "chang[ing] the culture of compliance" in the organization.[157] The Assessor characterized the gaps identified in the First Biennial Report as [redacted] and "consistent with the maturation of the [Privacy Program] in light of Meta effectively addressing previous weaknesses."[158] These observations demonstrate commitment to continual improvement, a crucial feature of any effective compliance program.

In conclusion, it is clear that Meta's Privacy Program, as created by the Redesign Decision, was designed and implemented in the context of a significant and challenging regulatory and reputational situation. Meta did not choose to simply take an easy or less costly route to patch its historical processes to achieve baseline compliance with the requirements of the Order. Moreover,

[155] First Biennial Report at 7.
[156] First Biennial Report at 12-13.
[157] First Biennial Report at 12.
[158] First Biennial Report at 7.

in some areas, like the design of its training, Meta chose to go significantly beyond what was required in the Order to support genuine employee engagement and impact.

In the course of my research, I have observed companies remediating programs under similar circumstances to Meta. Many such companies go on to develop robust and innovative compliance programs, which become examples that other organizations seek to emulate as best practice in the field of compliance. In my opinion, Meta's commitment to the Redesign Decision, the significant level of resources devoted to its Privacy Program, and the progress made to date, all point towards a conclusion that Meta is on the trajectory to creating a leading privacy program. Ultimately, based on my review of the materials described herein, I arrive at the same conclusion as the Assessor that "the key foundational elements necessary for an effective program were in place" at the time of the Initial Report.[159]

Eugene F. Soltes

March 7, 2024
Date

[159] First Biennial Report at 6.

Exhibit A

Eugene F. Soltes
Harvard Business School
Morgan Hall 365 • Boston, MA 02163
617-495-6480 (W) • 617-496-7363 (F)

EDUCATION

2009	Ph.D., Business, University of Chicago, Booth School of Business
2009	MBA, University of Chicago, Booth School of Business
2004	A.M. in Statistics, Harvard University
2004	A.B. in Economics, Harvard University

ACADEMIC APPOINTMENT

2023-Present	Unit Head, Accounting and Management Unit
2021-Present	McLean Family Professor of Business Administration
2020-2021	Professor of Business Administration, Harvard Business School
2015-2020	Jakurski Family Associate Professor of Business Administration, Harvard Business School
2009-2015	Assistant Professor of Business Administration, Harvard Business School

TEACHING

2022-Present	General Management Program (Executive Education)
2022-Present	Borderline (MBA)
2021	Managing Risk and Uncertainty (MBA)
2020	Corporate Misconduct (MBA)
2020	Designing Innovative Businesses and the Regulatory Environment (MBA)
2018-2019	Corporate Criminal Investigations (Harvard Law School, JD)
2014-2018	Finance for Senior Executives (Executive Education)
2014-Present	Risk Management for Corporate Leaders (Executive Education)
2012-2022	Program for Leadership Development (Executive Education)
2012	Field 2 Immersion Experience for Leadership Development, Vietnam (MBA)
2011	Driving Corporate Performance (Executive Education)
2009-2011, 2020	Financial Reporting and Control (MBA)

AWARDS AND HONORS

2018	Wyss Award for Excellence in Mentoring Doctoral Students, Runner-Up
2017	Strategy + Business, Best Business Books 2017
2015	Charles M. Williams Award for Outstanding Teaching, Harvard Business School
2015	Hillcrest Behavioral Finance Prize
2015	California Corporate Finance Conference Best Paper Award
2012	Financial Research Association Best Paper Award
2008-2009	Charles T. Horngren Fellowship

PUBLICATIONS

Books/Book Chapters

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Editorial Board: *Harvard Data Science Review*

Reviewer*:* *Management Science, Journal of Accounting Research, The Accounting Review, Journal of Accounting and Economics, Journal of Finance, Journal of Economic Sciences and Applied Research, Contemporary Accounting Research, Review of Accounting Studies, Accounting Horizons, Accounting, Economics, and Law, Journal of Law and Economics*

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

EXPERT REPORT OF DAVID MARTENS

I. Introduction **4**
A. Overview 4
B. Summary of Opinions 5
II. Qualifications **6**
A. Education 6
B. Employment History 6
C. Relevant Experience 7
D. Experience with Software Bugs 7
E. Experience with Meta's Systems 9
III. Engagement **10**
A. Assignment Overview 10
B. Compensation 10
C. Prior Work 10
D. Overview of Materials Relied Upon 11
IV. Background **11**
A. Facebook Overview 11
1. Friend Relationships Generally 11
2. Friend Relationships Facilitate Information Sharing 12
3. Facebook Privacy Settings Selectively Limit Information Sharing 12
4. Third-party Applications and Data Sharing 13
5. Access Tokens Control Facebook Access 13
B. Messenger Kids Overview 14
1. Parent-Approved Users Generally 15
2. Direct Messaging between Two Chat Participants 16
3. Group Communications 17
4. Approved Contact Check 18
C. Industry Consensus: Bugs are Unavoidable 19
D. Industry Consensus: Bugs are Hard to Foresee and Detect 20
1. Bugs that Require Multiple Events 21
2. Bugs Involving Race Conditions 22
E. Bug Bounty Program 22
F. Overlapping Controls 23
G. Technical Issues Described in the FTC's Order to Show Cause 24
1. Expired Apps Issue 24
2. Group Chat Issue 27
3. Video Calling Issue 32
V. Analysis **34**
A. Bugs in Facebook and Messenger Kids are Unavoidable 34
B. Meta's Use of Overlapping Controls Meaningfully Reduced Impact of the Issues 37

C. Analysis as to Specific Issues 39
1. Expired Apps Issue 39
2. Group Chat Issue 40
3. Video Calling Issue 42
VI. Conclusion **43**
APPENDIX A: CURRICULUM VITAE 46
APPENDIX B: MATERIALS RELIED UPON FOR OPINION 55

I. INTRODUCTION

A. Overview

1. Meta is a software company[1] that develops software and services including "Facebook" and "Messenger Kids."[2]

2. Facebook is an application[3] that offers, as is relevant here, a mechanism for third-party applications to access a user's data through an access-token mechanism.[4]

3. Messenger Kids is a messaging application that is designed for children under the age of thirteen to communicate with parent-approved Messenger Kids users ("MK Users") or parent-approved Messenger users by text or video chat. Parental controls are a key feature that differentiates Messenger Kids from other messaging applications such as Facebook Messenger or traditional text messaging.[5]

4. I have been asked to opine on three technical issues[6] that affected these applications between 2018 and 2020 (hereinafter collectively "the Issues"). One technical issue allowed a third-

[1] Meta was previously named "Facebook, Inc." until October 2021. See Meta, "Introducing Meta: A Social Technology Company", 28 October 2021, available at https://about.fb.com/news/2021/10/facebook-company-is-now-meta/. To avoid confusion between Facebook, Inc. (the company) and Facebook (the application), all references within this report to "Facebook" will be to the application rather than the company and all references to the company (now Meta) will use the "Meta" name notwithstanding that the company was named "Facebook, Inc." during part of the relevant period.

[2] Meta also develops the Facebook Messenger application, whose users can communicate with MK Users, subject to parental controls discussed below.

[3] See FN1.

[4] I discuss aspects of third-party access, via access tokens, in the Background and Analysis sections of this report.

[5] I discuss some aspects of these parental controls in the Background and Analysis sections of this report.

[6] I will refer to the bugs at issue by the same names used by Meta's legal team in materials submitted to the FTC: "Expired Apps Issue," "Group Chat Issue" and "Video Calling Issue." I made the decision to use these names for terminological consistency. I reviewed the materials submitted to the FTC for their factual content only and was never asked to adopt the legal team's wording or views, in this regard or any other regard, at any time. Given that these names all end with "Issue," I will refer to them generally or collectively as "issues," notwithstanding they represent bugs of various forms.

party application to retrieve data about a Facebook user after expiration of a 90-day time limit that Meta voluntarily implemented. Another technical issue resulted in a small number of MK Users being in chats with individuals whom the MK User's parent had not approved. This occurred during a limited period of time when an MK User took the unusual action of simultaneously selecting two users to add to the chat, thereby exposing a previously unknown software race condition.[7] An additional technical issue resulted in a small number of MK Users being on video calls with an individual who was not an approved contact of the MK User.

5. I have reviewed technical aspects of the Issues, the circumstances in which they arose, and how they were identified and resolved. I summarize these aspects of the Issues, within a broader context of the challenges faced by modern software developers, in the Background section of this report. I offer opinions about occurrence and resolution of the Issues in the Analysis section of this report.

B. Summary of Opinions

6. After reviewing the circumstances surrounding the occurrence of the Issues, I have reached several opinions which are summarized here.

7. In my opinion, all complex software, including Facebook and Messenger Kids, contains bugs. If software could only be released to the public after ensuring that such software was free of bugs, this requirement would deprive the public of all meaningful commercial software, because only the simplest software could be proven to be free of bugs.

8. In my opinion, the Issues were not foreseeable or easily detectable by software developers because the Issues arose from particularly complicated combinations of technical

[7] As discussed in greater detail below, a race condition exists where several inputs, whose individual timing may vary in highly unpredictable ways, contribute to creating an output such that the varied input timing leads to inconsistent (and potentially unpredictable) results.

circumstances that are difficult or impossible to anticipate or catch.

9. In my opinion, Meta's use of overlapping controls[8] reduced the scope and impact of the Issues and reflect Meta's investment in reducing or eliminating the impact of bugs that inevitably occur.

10. In my opinion, the time from identification to resolution of the Issues was very short, reflecting that Meta developers fixed the Issues in less time than would be expected within the industry for issues of this nature.

II. QUALIFICATIONS

A. Education

11. I have a Master's Degree in Electrical Engineering from Stanford University (with an emphasis on computer architecture and software) and a Bachelor's Degree in Electrical Engineering from the University of Wisconsin, Platteville. I also have a law degree from Santa Clara University.

B. Employment History

12. I run my own consulting business (Intuity Consultants). My consulting business concerns software development and intellectual property matters. I have been in technology consulting for more than seven years, I litigated technology cases at law firms for seven years prior to starting my consulting business,[9] I clerked at or for law firms working on technology matters during law school, and I was an engineer at Intel, IBM microelectronics, and Sun Microsystems for fourteen years prior. Collectively, I have been employed in these capacities since 1990.

[8] Overlapping controls are described in more detail in the Background section.

[9] I have also maintained a very small law practice for some years but this has always been less than two percent of my time spent since opening my consulting business.

C. Relevant Experience

13. I have extensive experience designing software and attempting to identify bugs in software. I am also very familiar with industry practice regarding identifying and preventing software bugs, as discussed in greater detail below.

14. I have written source code extensively in many languages including C, C++, several versions of assembly, Python, Perl, Java, SQL, Fortran, BASIC, Verilog, VHDL and a number of languages that were specific to jobs I held in technology. I am also familiar with several languages for which I have reviewed source code or written only smaller projects, such as C#, Visual Basic, JavaScript, Ruby, Objective C, and other versions of assembly.

15. Part of my consulting business involves developing software for clients and, to facilitate development of my business, I spend at least five hundred hours each year writing and testing software. A majority of my remaining time, per year, is spent reviewing software code written by others.

16. My curriculum vitae is included with this report as Appendix A.

D. Experience with Software Bugs

17. I have significant experience identifying and resolving software bugs.

18. In my experience, all software developers are limited, to some degree, on the extent to which they can foresee how users may use their software and to plan for appropriate responses to all potential user actions. I have certainly found that bugs crept into my software and that some bugs became apparent after my software was in use for a relatively long period of time. Effort and conscientiousness by software developers and team leads help, but no *practical* amount of effort or conscientiousness can eliminate *all* bugs.

19. For example, I have encountered software bugs during my development of multi-

threaded software.[10] As discussed below, one of the Issues arose in conjunction with multi-threaded software in Messenger Kids. Creating multi-threaded software is far more complex than creating conventional (single-threaded) software. I found that during this development process, some hard-to-identify bugs arose in my multi-threaded code and I found that diagnosing and understanding these bugs was far more difficult than similar diagnoses performed on conventional software. These challenges were further complicated by the limited degree to which conventional software development tools, like software debugging tools that are typically part of a code editor, perform in multi-threaded environments. For all of these reasons, crafting multi-threaded code is much more difficult and is more prone to bugs than conventional (single-threaded) code.

20. In my experience, most software bugs arise in practice from an interplay of complex technical issues, or an unanticipated corner case, that can only be understood by "stretching our mind" to see how a result could be produced. Often, these bugs are found by an observer identifying that a developer's software is not performing as expected when that software is used in unexpected ways or combined with other software. Thus, some bugs arise in the context of the interplay of complex technical issues or unanticipated corner cases and we can expect that such bugs will continue to occur, notwithstanding developer effort and experience.

E. Experience with Meta's Systems

21. I have been a Facebook user since 2008. I have also used Facebook Messenger

[10] A "thread" is a computing construct that allows multiple instruction streams to execute independently within a single computing process, to enable more efficient processing of certain tasks. Computing processes utilizing multi-threaded software typically involve processing steps where the timing of one step is independent of the timing of other steps. For example, a computing process that retrieves multiple blocks of data from the Internet, and processes each block of data independent of other retrieved blocks of data, may benefit from multi-threading because the timing at which each block was returned from the Internet may vary. In this example, performing each block's processing in a separate thread would allow operations for that block to proceed immediately upon that block's retrieval from the Internet. In this example, the time required for processing all blocks of data would be the maximum time for processing any block of data. By contrast, the time required for processing all blocks of data in a conventional (single-threaded) approach would be the sum of the times for processing each block of data.

since 2011.

22. I have first-hand experience working with Meta's systems from my involvement with the *Meta v. Brand Total* litigation analyzing how Facebook authenticates users through use of access tokens. I also have first-hand experience from my involvement with the *Voxer v. Facebook* litigation analyzing how "GraphQL" queries (i.e., queries of Facebook's primary API[11]) are formed and communicated to Meta's servers. Access tokens and GraphQL query technologies are means by which third-party applications can access certain user data through Facebook. My own software development and other consulting I have done for my clients also inform my understanding of the technologies at issue.

23. Further, I have reviewed Meta's source code for various aspects of the Facebook application in other engagements with Meta involving communications from a third-party application to Meta's servers and GraphQL communications between Meta's mobile applications and Meta's servers. I have not reviewed all or even a majority of Meta's extensive code. Nonetheless, I have extensive, first-hand experience reviewing Meta's source code through these prior engagements.[12]

24. The foregoing education, employment history, and experience provides a substantial foundation for understanding and opining on technical aspects of the FTC's inquiry.

[11] An application programming interface, or "API," is a communications interface that allows a first software application to communicate with a second software application in a way that the second software application is configured to receive information.

[12] My review included records of Meta's issue identification and remediation efforts but not the underlying code for the changes that were made by Meta engineers to address the three technical issues here. I do not believe that my analysis would have been meaningfully facilitated through access to the underlying code, given the nature of the opinions I have offered.

III. ENGAGEMENT

A. Assignment Overview

25. I have been retained by Latham & Watkins, LLP, counsel to Meta, to serve as a consulting and, if necessary, testifying expert witness for Meta in connection with potential litigation and the administrative proceedings arising from the FTC's May 3, 2023 Order to Show Cause in the Matter of Facebook, Inc. C-4365.

26. I have been asked to evaluate software issues that were identified and resolved within the Facebook and Messenger Kids applications, and to offer opinions and perspective on the nature of these issues within the broader context of software development.

27. The opinions contained in this report are based on the information available to me as of the date of this report.

B. Compensation

28. My compensation for work on this matter is at my standard hourly rate of $300 per hour. My compensation is not in any way contingent upon my testimony or the outcome of the FTC's inquiry.

C. Prior Work

29. Within the prior eighteen months, I have not served as a testifying expert for Meta but have served as a consulting expert witness for Meta on the following matters:[13]

- *Meta Platforms, Inc. v. Bright Data Ltd.*; 3:23-cv-00077; Northern District of California
- *WhatsApp, LLC, et al. v. NSO Group Techs. Ltd. et al.*; 4:19-cv-07123; Northern District of California
- *Eight KHZ, LLC v. Meta Platforms, Inc.*; 6:22-cv-00575; Western District of Texas

[13] I have been retained by Meta in other matters, as listed on my CV, but in those other matters have not provided any substantive consultation.

- *VideoShare, LLC v. Meta Platforms, Inc.*; 6:21-cv-00254; Western District of Texas
- *Gentex Corp. and Indigo Techs., LLC v. Facebook, Inc. and Facebook Technologies, LLC*; 6:21-cv-00755; Western District of Texas

30. My work on the matters listed above did not relate to the technical issues that are the subject of this report.

31. A list of the publications I have authored in the preceding ten years and a list of all cases in which I have testified as an expert at trial or by deposition within the preceding five years are listed in Appendix A.

D. Overview of Materials Relied Upon

32. In reaching the opinions expressed in this report, I relied upon the materials listed in Appendix B.

IV. BACKGROUND

33. Meta offers several applications to the public, including Facebook, Messenger, and Messenger Kids.[14]

A. Facebook Overview

34. Although many readers may be familiar with the basic operation of Facebook, an overview of certain Facebook features is offered as a foundation to discussing technical aspects of the Issues.

1. Friend Relationships Generally

35. A core feature of Facebook is allowing users to create relationships between users. One way to express a relationship between a first user (e.g., User A) and second user (e.g., User B)

[14] Meta offers these applications on several computing platforms, such as Android devices, iOS devices and web browsers. My reference to an application by name (e.g., "Facebook"), but without reference to a particular platform, refers to that application on any of the platforms for which the application is available.

is for Users A and B to agree to become "friends" within Facebook.

36. A friend relationship can be formed by User A sending a "friend request" to User B and User B accepting this request. Facebook makes available to a user, and to friends of that user, a count of the user's friends and the names of those friends.[15]

2. Friend Relationships Facilitate Information Sharing

37. When a Facebook user scrolls through content in their "feed," they may see content that the user's friends have posted. For example, if User B (who is friends with User A) recently posted a photo to Facebook, that photo may be a candidate for inclusion in User A's feed based on the friend relationship between Users A and B; i.e., an implied interest from User A in User B's posting.

3. Facebook Privacy Settings Selectively Limit Information Sharing

38. Facebook includes privacy controls that allow a user to limit what user information is shared with the public and with friends. Users can set privacy settings that apply to their posts generally. Users can also set privacy settings that apply to specific personal information (e.g., age or city) or that apply to specific posts (e.g., allow the public to see a particular posting but only allow friends to see a different posting).

39. Users can also control what non-public information they share with third-party applications. For example, a user can share particular information with one third-party application but can share different information with other third-party applications. Documents made available for my review describe the information-sharing limitations for third-party applications offered by

[15] The number and names of a user's friends are publicly available by default and the user may adjust these settings on Facebook. Facebook Help Center, "Adjust who can see your Friends section on Facebook", accessed on 22 February 2024, available at https://www.facebook.com/help/115450405225661. Facebook may make available to a user other information about the user's friends, subject to privacy settings discussed below.

Facebook at the time of the Issues, so I will not restate those capabilities beyond as discussed in this report.[16]

4. Third-party Applications and Data Sharing

40. A way that a third-party application can access a user's information is by Facebook sharing a user's access token with the third-party application. Using such an access token, a third-party application can make GraphQL queries to Meta's servers for information about a user, which will return the requested information if the user's access token was provided and if the user's privacy settings for the third-party application allow the third-party application to access that data.

41. A user can revoke a third-party application's access to the user's Facebook data through application-specific privacy settings within the user's Facebook account. Thereafter, the third-party application cannot initiate subsequent requests for the user's information (e.g., through GraphQL queries).[17]

5. Access Tokens Control Facebook Access

42. An access token is a string of digits that identifies a user and can be used by a third-party application to access information about that user.

43. With a user's access token, a third-party application can access the user's Facebook data (to the extent authorized by the user). Without a user's access token, a third-party application can access only information about a user that is publicly available.

44. The third-party application accesses a user's Facebook data using a Graph API

[16] See Appendix 1 to Letter from Michael Rubin to Reenah Kim and Linda Hollerman Kopp, both of the FTC, dated July 14, 2020.

[17] Note that the third-party may have stored the user's data that it retrieved from Facebook prior to the user revoking access to the third-party application. Facebook Help Center, "How to manage the privacy settings for apps, websites and games that you've logged into or connected on Facebook", accessed on 22 February 2024, available at https://www.facebook.com/help/218345114850283 ("Removing the app, website, or game only prevents it from continuing to access your non-public information through Facebook.").

request which includes the user's access token. In this scenario, the third-party application would submit a request for the desired information about a user (e.g., User A) and would include that user's access token within the Graph API request.

45. A third-party application can also make a request for limited types of information about a second user (e.g., User B) from Facebook, using User A's access token. The application may do so only if Users A and B are Facebook friends, if Users A and B have both approved sharing of this information with the third-party application, and User B's privacy settings allow User A to view such information. In this scenario, the third-party application would submit a request for the desired information about User B using User A's access token in the Graph API request.

B. Messenger Kids Overview

46. Meta provided to the FTC a description of Messenger Kids in materials provided for my review that is consistent with my understanding of the general features and capabilities of Messenger Kids.[18] Therefore, I will incorporate by reference that discussion of general features and capabilities here.

47. Messenger Kids facilitates communications using "chats" and by facilitating video or audio calls. MK Users can participate in chats or video calls with other MK Users and with Messenger users. Video calls within Messenger Kids start from chats, so participation in all communications facilitated by Messenger Kids involves selecting chat participants. Therefore, the discussion that follows about valid or invalid participants in a chat or video call refers generically to "chat participants."

[18] See Facebook, Inc.'s Nov. 15, 2019 Responses to Specifications for (A) Interrogatory Responses and (B) Production of Documents in the Federal Trade Commission's Civil Investigative Demand, Dated October 8, 2019 at Interrogatory 2(a).

48. Messenger Kids implemented technical mechanisms to prevent an MK User from communicating with non-parent-approved Messenger Kids and non-parent-approved Messenger users (collectively "Non-Parent-Approved Users"). An overview of these technical mechanisms is provided below to provide a foundation for discussing issues that arose with those mechanisms within a broader context of software development.

1. Parent-Approved Users Generally

49. MK Users can only communicate with Messenger users or MK Users that their parent has approved (collectively "Parent-Approved Users").[19] In order for an MK User to be in a chat or video or audio call with two or more individuals (MK User or Messenger user), all other participants in the communication must be Parent-Approved Users.[20,21]

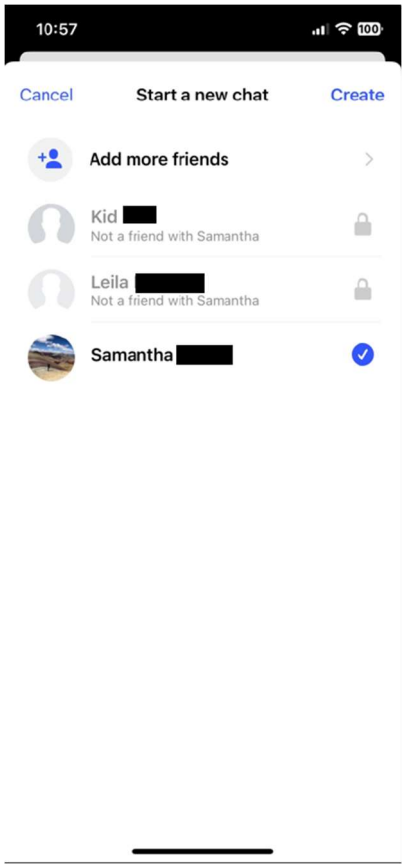
50. When an MK User creates a chat, potential chat participants are presented to the user in an application component allowing selection of approved chat participants (hereinafter "People Picker"). An example of this People Picker is shown below.[22]

[19] As of 2020, an MK User's guardian can choose to allow an MK User to add and remove their own connections, with the supervision of the guardian. This functionality did not exist at the time of the issues discussed here, and is therefore outside the scope of this report.

[20] This policy avoids an unintended, unapproved communication in the situation where MK User A's parents have approved MK User A communicating with MK User B (and vice-versa) and MK User A's parents have approved MK User A communicating with MK User C (and vice-versa) but MK User B's parents have not approved MK User B communicating with MK User C.

[21] The Group Chat Issue and the Video Calling Issue were temporary exceptions to this policy as discussed below.

[22] Loren Cheng (Meta Product Management Director), "Introducing Messenger Kids, a New App for Families to Connect", 4 December 2017, available at https://about.fb.com/news/2017/12/introducing-messenger-kids-a-new-app-for-families-to-connect.



51. Chats can only be initiated with users contained in the People Picker. Thus, the People Picker provides a first control for limiting MK Users' communications to only Parent-Approved Users.

52. MK Users can participate in one-on-one chats or in group chats, which present different security-validation challenges. These options are discussed as follows.

2. Direct Messaging between Two Chat Participants

53. A one-on-one chat involves direct communications between a first MK User and either another MK User or a Messenger user.

54. In a one-on-one chat, the chat-initiating user is presented with the People Picker and selects a single chat participant by tapping a user within the People Picker, using a finger or a

stylus.[23] The single-select operation indicates, to Messenger Kids, that the chat-initiating user intends to start a chat with the selected chat recipient. The chat-initiating user composes a message to the chat recipient, and upon completing message composition directs Messenger Kids to send the message to the chat recipient.

3. Group Communications

55. A group communication involves communications between a first MK User and two or more other users, who may be MK Users or Messenger users. The typical behavior for creating a group chat involves *using sequential single-select operations*. Specifics of this type of communication are more complicated than direct messaging between two users.[24]

56. A sequential single-select operation involves selecting a first chat participant by tapping a single user within the People Picker, using a finger or a stylus, and repeating this tapping operation to select additional chat participants from the People Picker.

57. The act of selecting each chat participant within the People Picker triggers a check within Messenger Kids. This check determines whether other unselected chat participants within the People Picker are permitted to join a chat with all selected chat recipients. If any selected chat participant has not been approved to communicate with any unselected chat participant in the People Picker, the unselected chat participant is made inactive[25] within the People Picker, thereby preventing subsequent selection of that unselected chat participant. This check is repeated for each

[23] Note that the direct message could be between two mutually parent-approved MK Users or a MK User and a parent-approved Messenger user. Note also that the chat-initiating user could be a parent-approved MK User or a parent-approved Messenger user. No relevant requirements or application operations differ between these scenarios.

[24] Messages sent between three or more users are often referred to as "group messages."

[25] The term "inactive" has a specific meaning, within the context of user-interface design, and refers to graying out an option (providing a visual cue that the selection is different in some way) and preventing that option from being selected (i.e., touchscreen taps on the option have no effect).

selection of a chat participant within the People Picker.

58. For example, if MK User A selects MK User B to join a chat (authorized by parents of MK User A and MK User B agreeing that those kids could chat), and MK User C was in MK User A's People Picker (authorized by parents of MK User A and MK User C agreeing that those kids could chat), but parents of MK User C did not authorize MK User C to chat with MK User B, Messenger Kids would recognize this situation and would make MK User C inactive in the People Picker upon MK User A's selection of MK User B as a chat participant.[26] In this sequential single-selection operation identifying chat participants, the validation scheme provided by the People Picker only allowed the chat-initiating user to select chat participants whose parents have approved chats with all selected chat participants.

59. A less common mechanism for creating a group chat involves *using a double-select operation*[27,28] (i.e., selecting two chat participants from the People Picker at the same time, rather than sequentially) on the Android version of Messenger Kids. One of the Messenger Kids issues involved MK Users' use of a double-select operation.[29]

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[26] The screenshot of the People Picker shown above contains examples of inactive users. As seen therein, Samantha has been selected for participation in a group chat but Leila is not a Parent-Approved User relative to Samantha, so Leila is inactive. This screenshot is consistent with my explanation of MK Users A, B and C. Specifically, MK User A is initiating the group chat, Samantha (corresponding to MK User B) has been selected for inclusion within the group chat and Leila (corresponding to MK User C) has been excluded from the group chat and is therefore inactive.

[27] A "double-select operation" involves *simultaneously* tapping a touch-sensitive display at two display locations, each reflecting a different name of a potential chat participant within the People Picker of potential chat participants, using a finger or a stylus, to indicate selections of two chat participants. Put another way, a double-select operation involves selecting two contacts simultaneously to participate in a group chat (e.g., using two fingers to simultaneously select two participants), instead of selecting each contact sequentially.

[28] Some technologists use the term "multi-select" to describe simultaneous touch actions that result in selecting multiple options within a user-interface element.

[29] A double-select operation is not possible on the iOS version of Messenger Kids because that application version does not allow double-select operations. Therefore, double-select operation on the Android version of Messenger Kids described below, could not occur on the iOS version of Messenger Kids.

4. Approved Contact Check

60. Messenger Kids employs overlapping controls, as discussed in the Background section of this report. An example of overlapping controls relevant to the present issue is the logic for creating Messenger Kids chats built into Meta's server-side software. This logic, referred to as the "Approved Contact Check," validates that all chat participants, received from People Picker selections discussed above, are indeed Parent-Approved Users with regard to all participating MK Users.[30] This validation step is performed when a chat thread is created.

61. If the Approved Contact Check logic determines that any chat participant is a not a Parent-Approved User with regard to any participating MK User, the logic will prevent creation of a chat thread involving the chat participants. As previously discussed, video calls arise from chat threads, so the Approved Contact Check also operates to prevent video calls involving any Non-Parent-Approved User. If, however, the Approved Contact Check logic confirms that all chat participants are Parent-Approved Users, with regard to all participating MK Users, this logic allows chat thread creation between those users.

62. Logic for the Approved Contact Check was included within Messenger Kids when the app launched. This logic was later "refactored" in June 2018.[31,32] The refactoring effort moved the location of the Approved Contact Check and inadvertently created an issue with that logic as discussed in the "Approved Contact Check Issue" discussion below.

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[30] See, e.g., "Approved Contact Check" discussion in "White Paper" submitted on behalf of Facebook, Inc., by Michael Rubin to the FTC, dated January 31, 2020 at 5.

[31] See "White Paper" submitted on behalf of Facebook, Inc., by Michael Rubin to the FTC, dated January 31, 2020 at 11 (discussing a June, 2018 code change that moved logic for the Approved Contact Check).

[32] Code "refactoring" involves restructuring software logic so that the restructured logic is organized in a different way while performing the same functions as the logic performed prior to refactoring. Code refactoring is a common design practice that is often done by sophisticated software development organizations as part of a long-term effort to improve code organization and maintainability.

C. Industry Consensus: Bugs are Unavoidable

63. An industry consensus exists that the occurrence of some bugs in software is unavoidable. For example, David Heinemeier Hansen, the creator of the Ruby programming language and CEO of 37Signals, a software company that develops the popular "Base Camp" project-planning software application, describes software bugs this way:[33]

> Disappointment occurs when expectations don't match reality. And our expectations for software quality are profoundly unrealistic. Thus, lots of people are continuously disappointed — even enraged — by software bugs. They shouldn't be. The only reliable, widely used way to ensure impeccable software quality is to write less software that does less stuff, and then spend eons honing that tiny lot. Such an approach, however, is very rarely compatible with commercial success or even programmer motivations (despite what many may claim).

64. Hansen's view is shared widely across the software industry.[34]

65. Leading companies would have eliminated software and hardware bugs in their products if doing so was feasible. Extensive industry experience, including examples discussed herein, indicate that bugs have existed and continue to exist in modern designs notwithstanding very substantial investments of capital, technology and effort toward reducing bugs.

D. Industry Consensus: Bugs are Hard to Foresee and Detect

66. Software bugs are expensive to identify (and fix) because they are difficult for software developers to foresee and detect. A fairly substantial sub-industry has arisen within the existing software development industry around creating tools whose sole purpose is to help

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[33] David Heinemeier Hansson, "Software has bugs. This is normal.", 7 February 2023, available at https://world.hey.com/dhh/software-has-bugs-this-is-normal-26d5fd06.

[34] See, e.g., Beta Breakers, "The Ultimate Guide to Software Bugs", 29 June 2022, available at https://www.betabreakers.com/the-ultimate-guide-to-software-bugs ("Software bugs are inevitable") and BrowserStack, "7 Common Types of Software Bugs Every Tester Should Know", 21 March 2023, available at https://www.browserstack.com/guide/types-of-software-bugs ("Software bugs are an inevitable part of the software development life cycle"). Dozens of similar statements are readily available from trusted industry sources.

developers identify software bugs. For example, Selenium is a very popular software project for automating browser-based testing to allow developers to confirm the functionality of the software running their websites.[35] In another example, Amazon offers a service called "Device Farm" that provides innumerable different mobile device models and types to facilitate automated testing of mobile software applications, on different device types, in order to help identify difficult-to-find software bugs.[36] Meta maintains its own device farm as part of Meta's software testing.[37] Numerous other software tools exist to facilitate software testing. The existence of these tools, and the money and time spent creating these tools,[38] reflects the seriousness with which the industry takes finding and fixing software bugs. Despite these measures, bugs remain hard to foresee and detect, particularly bugs involving multiple events and race conditions.

1. Bugs that Require Multiple Events

67. Bugs that involve the occurrence of several events occurring simultaneously or in a particular sequence are very difficult for software developers to foresee or catch.

68. One reason for this difficulty is testing that would catch such bugs must create the multiple conditions required for the bug to occur for that testing to catch the bug. This testing is

[35] See BrowserStack, "Selenium Testing: Detailed Guide", accessed on 22 February 2024, available at https://www.browserstack.com/selenium ("Selenium is an open-source suite of tools and libraries that is used for browser automation. Selenium is used to … test … websites functionally on different browsers.").

[36] See AWS, "Automated Testing Tools: AWS Device Farm", accessed on 22 February 2024, available at https://aws.amazon.com/device-farm/ ("Improve the quality of your web and mobile applications by testing across desktop browsers and real mobile devices hosted in the AWS Cloud").

[37] See "White Paper … Messenger Kids" submitted on behalf of Facebook, Inc., by Michael Rubin to the FTC, dated January 31, 2020 at 4 ("The QA teams utilized a variety of test devices on multiple operating systems with a range of specifications (e.g., a variety of differing screen sizes, system versions, speeds, etc.)."). I understand this variety of devices with varying specifications to reflect a device farm of such devices.

[38] The software industry spends billions of dollars per year trying to identify bugs in software. Public sources estimate the portion of software development cost attributable to testing at 10% or more of the total cost of developing software. See, e.g., Vikash Sharma, "A Comprehensive Guide to Software Testing Costs", accessed on 22 February 2024, available at https://www.sparxitsolutions.com/blog/software-testing-cost (15-25% of total cost). The percentage any particular company spends will depend in large part on company-specific circumstances.

limited by a developer's ability to identify interactions and combinations of events that may lead to a bug.

2. Bugs Involving Race Conditions

69. Bugs involving race conditions[39] are understood to be among the hardest types of bugs for software developers to identify and resolve. The difficulty with such bugs arises for several reasons.

70. One reason is that race conditions inherently involve variable timing circumstances that may be difficult to predict. These variable timing circumstances can lead to different software outcomes, under different circumstances, with some of the most challenging race conditions arising in situations that a developer cannot anticipate.

71. Another reason is that tools for testing software, and identifying the existence of conventional (non-race-condition) bugs, are generally not capable of identifying the existence of such race conditions. Thus, a software developer operates as the last line of defense for identifying the possibility of such race conditions.

E. Bug Bounty Program

72. To address the unavoidability of bugs and the difficulty for software developers to detect them, an industry-consensus best practice is to encourage developers or users, outside of a company, to report bugs found in the company's product, by offering a financial incentive and reputational benefit for doing so. Meta makes significant use of this program – what Meta calls its

[39] A race condition exists where several inputs, whose individual timing may vary in highly unpredictable ways, contribute to creating an output such that the varied input timing leads to inconsistent (and potentially unpredictable) results. Race conditions are among the hardest bugs to anticipate because they inherently involve a timing aspect that is contrary to a designer's expectations. Anticipating race conditions requires a mental process of stretching one's mind to imagine scenarios, or combinations of scenarios, where the system operates very differently than expected.

"Bug Bounty" program.[40]

73. Meta's Bug Bounty program has received numerous bug reports from the public. From 2011 to 2021, Meta received 170,000 bug reports which led to 8,500 instances where Meta compensated the public for submitting a bug report. Potential rewards for individual bug reports range from $500 to $300,000, depending on the nature of the bug reported (and confirmed).[41] Meta's Bug Bounty program specifically offers rewards for reports of data misuse by app developers.[42]

74. Notwithstanding the popularity of Meta's Bug Bounty program, and its applicability to the Issues, none of the Issues were submitted to Meta's Bug Bounty program.[43]

F. Overlapping Controls

75. Overlapping controls are also viewed by the software industry as a known and effective way to avoid or reduce security concerns or other negative user experiences arising from bugs.

76. Overlapping controls refer to multiple instances of software logic that collectively provide multiple (redundant) checks for important conditions.

77. Overlapping controls can mitigate the effect of software bugs if a bug exists in one

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[40] See, e.g., Meta, "Meta Bug Bounty Program", last updated 24 August 2023, available at https://www.facebook.com/whitehat.

[41] See Neta Oren (Meta Bug Bounty Lead), "Looking Back at Our Bug Bounty Program in 2022", 15 December 2022, available at https://about.fb.com/news/2022/12/metas-bug-bounty-program-2022/.

[42] See Meta, "Data Abuse Bounty: Facebook Rewards for Reports of Data Abuse", 10 April 2018, available at https://about.fb.com/news/2018/04/data-abuse-bounty/.

[43] See "White Paper" submitted on behalf of Facebook, Inc., by Michael Rubin to the FTC, dated January 31, 2020 at 6 ("Messenger Kids has not identified any user complaints about this error, nor were any bug bounty reports ever submitted about it through Facebook's bug bounty program ...."). See also "White Paper" submitted on behalf of Facebook, Inc.,by Michael Rubin, Serrin Turner and Marissa Boynton to the FTC, dated July 28, 2021 at 9 ("No bug bounty report was ever submitted about the Coding Oversight, even though it was something that a bug bounty researcher would have been capable of looking for and detecting.").

software component but the effect of that bug is mitigated by another software component. Examples of overlapping controls are discussed in the Background and Analysis sections of this report. For example, if a key function was ensuring that a Non-Parent-Approved User was not added to a chat with a MK User, including multiple checks that this situation did not occur would reflect use of overlapping controls.

78. When software operates without bugs, overlapping controls provide no extra consumer-visible benefit to a software application.

79. The effort and expense spent developing overlapping controls reflects a considerable investment similar to an insurance policy.

80. Meta employs overlapping controls in numerous ways, including several ways discussed in this report.

G. Technical Issues Described in the FTC's Order to Show Cause

81. The present FTC inquiry concerns, as relevant to this report, three issues related to software bugs. A technical overview of these issues follows and my opinions about these issues are stated in the Analysis section of this report.

1. Expired Apps Issue

82. A first issue – the Expired Apps Issue – arose in the context of a preventative privacy measure that Meta voluntarily adopted to limit access to Facebook user data by a third-party application after a user had not used that third-party application for ninety days. The Expired Apps Issue concerned a corner case involving Facebook friends that the team that coded the feature did not focus on at the time.

a. Facebook Adopted a Voluntary Limitation on Data Sharing with Third-party Applications after 90 Days of Apparent

Inactivity

83. Facebook has long had controls in place that prevent a third-party application from accessing a user's nonpublic data on Facebook without the user's consent.[44] These controls include a restriction that prevents the third-party application from obtaining nonpublic information about a user's friends unless those friends are users of the same application and have already agreed to directly share the information with the application.

84. In April 2018, Facebook went beyond these user controls by announcing that it would *automatically* prevent a third-party application from continuing to access a user's data if it appeared the user had not used the application within the prior ninety days (the "90-Day Limitation"). This change was intended as a preventative safeguard that Facebook voluntarily adopted to protect against potential abuse of users' data. Although the documents submitted to the FTC set forth the technical nature of the 90-Day Limitation in much greater detail than I shall provide here, an overview of that technical nature is provided here as a foundation for further discussion.

85. Facebook's systems look for what Meta describes as "signals" that *a user* used a previously authorized third-party application at least once during the last ninety days.[45] If one or more signals suggest to Facebook that the user has used the third-party application within the last ninety days, a previously authorized third-party application can continue to access the user's data consistent with the user's prior authorization. However, in the absence of any signals indicating

[44] See, e.g., Meta, "Introducing Anonymous Login and an Updated Facebook Login", 30 April 2014, available at https://about.fb.com/news/2014/04/f8-introducing-anonymous-login-and-an-updated-facebook-login and Meta, "An Update on Our Plans to Restrict Data Access on Facebook", 4 April 2018, available at https://about.fb.com/news/2018/04/restricting-data-access/.

[45] Documents that I reviewed for this engagement differentiate a user using the third-party application from the third-party application initiating communications with Facebook. The former activity resets the 90-Day Limitation while the latter does not reset that time limit.

that the user has used the third-party application within the last ninety days, the user is presumed to be no longer actively using the app, and the third-party application is blocked from further accessing the user's data on Meta's servers.

86. The nature of Facebook's signal checks favors greater privacy over greater access. More specifically, the system defaults to restrict access after ninety days unless it detects a signal. Some user activity might not trigger a signal, and in that situation third-party application access would be limited notwithstanding human use of the third-party application.

b. Facebook Discovered that the 90-Day Limitation was not Enforced in a Corner Case

87. A Facebook engineer discovered that a combination of circumstances could arise that would allow a third-party app to access data for a user even after ninety days of apparent inactivity. Specifically, if *all of* the circumstances listed below came into simultaneous existence, a third-party application's access to the second user's data would not conform to intended behavior.

1. A first user (e.g., User A) has a friend relationship with a second user (e.g., User B)
2. User A authorizes a third-party application to (directly) access User A's data (subject to privacy settings selected by User A)
3. User B authorizes the same third-party application to (directly) access User B's data (subject to privacy settings selected by User B)
4. Facebook signal technology suggests that User A *has used* the third-party application within the last ninety days, so the third-party application's access to User A's data is not disallowed due to the 90-Day Limitation
5. Facebook signal technology suggests that User B *has not used* the third-party application within the last ninety days
6. The third-party application attempts to access data that User B previously made accessible to the third-party application (through privacy settings selected by User B)

7. The third-party application's attempt to access User B's data is through User A, using User A's access token *and* through the friend relationship between Users A and B

88. Simultaneous existence of all seven conditions would lead to the third-party application accessing User B's data whose access would have been blocked if the third-party application had queried the information directly from User B (i.e., using User's B's access token) based on signal technology suggesting that User B had not used the third-party application within the last ninety days.

c. Facebook Remediated the Corner Case within Days

89. Meta engineers identified that Facebook did not function as desired in the corner case discussed above. These engineers developed a software change to address the corner case within several days.[46] These engineers tested the software change prior to releasing the software change to the public. These engineers performed a "canary release" to 5% of the public.[47] These engineers confirmed that no problems arose from the canary release to the public, so the engineers released the fix to all users. No recurrence of this issue has occurred since the software change discussed herein.

2. Group Chat Issue

90. Second, in certain very limited circumstances between June 2018 and July 2019, an MK User could create a group chat with Parent-Approved Users even if those Parent-Approved

[46] The Expired Apps Issue was discovered by Meta developers on June 16, 2020 and a fix for this issue was implemented on June 19, 2020. See "White Paper" submitted on behalf of Facebook, Inc., by Michael Rubin, Serrin Turner and Marissa Boynton to the FTC, dated July 28, 2021 at 9.

[47] A "canary release" occurs when a software change is released to a small percentage of customers using a software application, subject to monitoring the updated application for logic or performance issues arising from the software change. The "canary" portion of this term comes from canaries being used in underground coal mines to detect the existence of poisonous fumes that would be dangerous but unnoticeable to humans but would quickly kill a canary. Thus, canaries were an early indication of a serious problem. If a canary release does not provide an early indication of a serious software problem, a general release to the public typically follows (sometimes in stages such as 25%, 50%, 75% and 100% of the public).

Users were not approved to communicate with one another (the "Group Chat Issue").

91. If an MK User used the double-select operation[48] on the Android version of Messenger Kids, that action *could* lead to the MK User selecting chat participants who were not approved to communicate with each other.

92. For example, on Messenger Kids for Android, if MK User A (simultaneously) double selected MK User B and MK User C as chat participants from the People Picker,[49] but parents of MK User C did not authorize MK User C to chat with MK User B, MK User C would not be a valid chat participant. Due to the Group Chat Issue, though, a double-select operation involving MK User B and MK User C would improperly allow chat formation between MK Users A, B and C.

93. The Group Chat Issue arose only when these circumstances occurred:

1. A MK User attempts to create a chat on Messenger Kids for Android
2. The MK User performs a double-select operation on chat recipients
3. One of the selected chat recipients is not approved by a parent of the other selected chat recipient

94. The Group Chat Issue was caused by an interaction between two separate issues—a race condition that impacted Android devices and the June 2018 refactoring of Messenger Kids' server-side control, the Approved Contact Check.

a. Race Condition Issue

95. A race condition existed on Messenger Kids for Android[50] within the check that

[48] See FN27 for a description of double-select operations within Messenger Kids.

[49] The presence of MK User B within MK User A's People Picker of potential message recipients means that parents of MK User A and MK User B authorized communications between MK User A and MK User B. Similarly, the presence of MK User C within MK User A's People Picker of potential message recipients means that parents of MK User A and MK User C authorized communications between MK User A and MK User C.

[50] See Facebook, Inc.'s Nov. 15, 2019 Responses to Specifications for (A) Interrogatory Responses and (B)

otherwise prevented MK Users from chatting with Non-Parent-Approved Users. The race condition caused the logic to improperly allow MK Users to select chat participants who were not approved to communicate with each other by using the double-select operation discussed above.

96. Messenger Kids' logic for handling user-interface operations, such as receiving a single-select or double-select operation from a user selecting chat participants with a People Picker, occurs in a thread separate from logic for determining whether the selected chat participants are valid within the People Picker interface, i.e., it is a multi-threaded process. Indeed, most or possibly all business logic[51] is in threads separate from logic for handling user-interface operations.

97. These multi-threaded operations require special software constructs to prevent threads from simultaneously accessing and/or changing data in ways that would lead to inconsistent and incorrect results. For example, if one thread was summing the values of ten numbers in shared memory while a second thread modified the values of one or more of the same numbers in the same shared memory, the sum (result) generated by the first thread may be incorrect because of changes made to the numbers before the sum operation was completed.

98. Messenger Kids uses one such construct, called a "mutex," to coordinate access to the list of chat participants, so that each user added to a chat is a Parent-Approved User for all other users. In a single-select or sequential-single-select operation, the mutex is designed to ensure that a chat participant is validated as Parent Approved before any additional chat participants can

Production of Documents in the Federal Trade Commission's Civil Investigative Demand, Dated October 8, 2019 at Interrogatories 3 and 4.

[51] Business logic reflects code that implements what users would consider the core functionalities of an application. In the case of Messenger Kids, those core functionalities would include sending chat messages, receiving chat messages, and performing validations around security aspects of Messenger Kids. By contrast, logic for presenting user-interface aspects of an application is separate from business logic. In the case of Messenger Kids, user-interface logic would include creating and displaying user-interface components such as the People Picker and components for typing or displaying a text message, image or video.

be added.[52]

99. The way that the mutex was incorporated within Messenger Kids for Android unexpectedly allowed two users, in a double-select operation with the People Picker, to be added as chat participants without checking whether those users were approved to communicate with each other. Although both double-selected users were Parent-Approved Users of the MK User operating the People Picker, the double-selected users may not have been Parent-Approved Users *as to one another*.

100. This unexpected operation involving the mutex was due to a subtle race condition arising from how the mutex was incorporated within Messenger Kids for Android.[53] The race condition unexpectedly allowed both double-selected users to be added to the list of chat participants even if they were not Parent-Approved Users as to one another.[54,55]

101. If the race condition had not occurred, the double-selected users would have been added to the list serially, validating the list after each addition, and the Group Chat Issue would not have arisen.[56] A second issue, with the Approved Contact Check, also facilitated the Group Chat Issue, as discussed next.

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[52] See "White Paper" submitted on behalf of Facebook, Inc., by Michael Rubin to the FTC, dated January 31, 2020 at 10.

[53] See "White Paper … Messenger Kids" submitted on behalf of Facebook, Inc., by Michael Rubin to the FTC, dated January 31, 2020 at 10.

[54] Recall the example, earlier, where MK User A can chat with MK Users B and C but MK User B cannot chat with MK User C (based on parent approvals or lack thereof).

[55] Note that the race condition did not, by itself, lead to adding a Non-Parent-Approved User to a chat. That user addition also involved the Approved Contact Check Issue discussed below.

[56] Additionally, if the Approved Contact Check Issue (discussed next) had not occurred, the race condition's undesirable result would have been caught and the Group Chat Issue would not have occurred. A combination of the race condition and the Approved Contact Check Issue led to the Group Chat Issue.

b. Approved Contact Check Issue

102. Refactoring of the Approved Contact Check logic, as discussed above, introduced a functional change within the logic that prevented the Approved Contact Check from detecting the Non-Parent-Approved Users that were added as chat participants in a group chat thread. More specifically, a first portion of the Approved Contact Check logic validated users in a proposed two-user chat and a second portion of the Approved Contact Check logic validated users in a proposed chat involving three or more users.

103. The refactoring operation did not remove the first portion of the Approved Contact Check logic but unintentionally removed the second portion of the logic. Therefore, after refactoring, the Approved Contact Check logic only included the check for one-on-one chat threads.

104. The combination of (A) the race condition and (B) the refactored-out second portion of the Approved Contact Check logic allowed a double-selected MK User to potentially participate in a chat (and potentially a video call[57]) with Non-Parent-Approved Users. This was only possible in group chats created by MK Users using the Android version of Messenger Kids.[58]

c. Resolution

105. Meta developers recognized the Group Chat Issue on June 12, 2019. Within twenty-four hours of recognizing this issue, the Approved Contact Check Issue was resolved by reverting the refactoring on June 13, 2019, thereby returning the second portion of the Approved Contact

[57] Recall that video calls arise from chats, so including a user within a chat allows for that user to be included within a video call.

[58] As discussed above, the race condition arose from a double-select operation, which could only occur on the Android version of Messenger Kids.

Check to Facebook's server-side logic.[59]

106. Resolution of the Approved Contact Check Issue was effective for preventing creation of chats involving Non-Parent-Approved Users (for the reasons discussed earlier). Thus, the Group Chat Issue was resolved within twenty-four hours.

107. Meta developers further identified the existence of the race condition discussed above. Within two days, the circumstances of this race condition were understood and the race condition was fixed.[60]

108. Within another twenty days, additional server-side logic was added to check that only Parent-Approved Users were chat participants with each chat message sent, rather than only performing the check at chat creation. The additional logic was not required to remove the race condition but was added for enhanced confidence that unexpected issues would be detected as a form of additional overlapping controls.

3. Video Calling Issue

109. A second issue also existed within Messenger Kids for brief periods of time in the iOS and Android versions of Messenger Kids.[61] This issue was caused by the undesired activation of the "escalation" feature within code shared by Facebook Messenger and Messenger Kids.

110. "Escalation" is a Messenger-only feature that allows a Messenger user to add a third

[59] See "White Paper" submitted on behalf of Facebook, Inc., by Michael Rubin to the FTC, dated January 31, 2020 at 8.

[60] See "White Paper" submitted on behalf of Facebook, Inc., by Michael Rubin to the FTC, dated January 31, 2020 at 8.

[61] The time periods for which the Video Calling Issue occurred on iOS and Android differ. The bug on iOS began with an inadvertent code change on November 12, 2018 and ended with detecting and fixing the inadvertent code change in January 2019. The bug on Android began with a similar inadvertent code change on May 27, 2019 and ended with detecting and fixing the inadvertent code change within a single day on July 2, 2019.

user to an *existing* video call between the Messenger user and a second user.[62] Because escalation was intended to be a Messenger-only feature, security checks built into escalation logic performed only Messenger-relevant checks rather than checks relevant to Messenger Kids.

111. Messenger developers' intentions were that escalation was allowable in calls only involving other Messenger users and not allowable in calls where any user was an MK User. Consequently, Meta's developers added code to Messenger that was designed to prevent Messenger users from escalating calls involving MK Users (the "preventative code").

112. The Video Calling Issue arose due to the unexpected impact of removal of the preventative code from Messenger and an unexpected interaction between the Approved Contact Check and the escalation feature described above.[63] This code-removal event occurred in the iOS version of Messenger in late 2018, allowing escalation with MK Users within that version of Messenger, from November 12, 2018 to January 30, 2019. Meta discovered the bug internally and corrected it in January 2019. At that time, the Android version of Messenger was checked for the same issue but no such issue existed.

113. A second, separate preventative code-removal event impacted the Android version of Messenger Kids in May as part of a new version of the Android app. In this second event, which Meta identified and fixed on July 2, 2019, the preventative code removal resulted in the potential

[62] See https://about.fb.com/news/2018/02/we-just-made-it-easier-to-add-more-friends-and-family-to-your-messenger-audio-and-video-chats/.

[63] Code can be unexpectedly removed for several reasons notwithstanding that software development as a whole is occurring in a robust and thoughtful manner. One way would be to inadvertently turn off a feature, for which code existed, through a configuration setting that caused such code to not get executed. Another way would be to inadvertently delete code from a source file (or use an earlier version of the source file lacking such code) and incorporate the improper version of the file into an executable software distributed to the public. Code may also be inadvertently removed from software through an oversight by a single developer or due to an unexpected outcome from a software development tool. Because neither humans nor software tools are perfect, such occurrences will happen occasionally even when best practices are utilized throughout.

for escalation within the Android version of Messenger Kids from May 27, 2019 to July 2, 2019.[64]

114. Due to the existence of the Approved Contact Check, engineers did not expect that the removal of the preventative code could result in a Non-Parent-Approved User being added to a video call with an MK User. The Approved Contact Check was expected to detect instances where a Non-Parent-Approved User was being added to a chat, the first step to creating a video call on Messenger Kids, and prevent such additions. However, when a Non-Parent-Approved User was added to an ongoing video call between an MK User and a Parent-Approved User an unexpected event occurred: the MK User was removed from the new underlying chat thread for the group call with the Non-Parent-Approved User but remained on the video call with that person.

115. As a result, a Non-Parent-Approved User could be inappropriately added to an existing video call with an MK User. However, this only occurred if all of the circumstances listed below came into simultaneous existence:

1. An ongoing video call existed
2. Only two users existed on that call
3. One user was a MK User
4. The other user was a Messenger user (which requires that the Messenger user was approved by the MK User's parent)
5. The Messenger user added a third user to the video call, who was not approved by the MK User's parent
6. The act of adding the third user occurred between November 2018 and January 2019 for iOS Messenger users or late May and early July 2019 for Android Messenger users.

[64] See "White Paper … Messenger Kids" submitted on behalf of Facebook, Inc., by Michael Rubin, dated January 31, 2020 at 7.

V. ANALYSIS

116. I have reviewed the circumstances and resolution of the Issues, as summarized above, and offer my interpretations and opinions on the Issues as discussed next.

A. Bugs in Facebook and Messenger Kids are Unavoidable

117. Bugs happen despite developers' most conscientious efforts to avoid such bugs. I am not alone in this opinion; a consensus has developed within software development that our best efforts can only hope to achieve "few" but not "zero" bugs.[65]

118. Once we accept that bugs happen, despite companies having a large economic incentive to avoid such bugs and taking steps to detect and prevent them, a question remains why such bugs continue to occur.

119. In my opinion, bugs occur because the systems being designed are more complex than can be thoroughly validated through technology *available today*.[66] In the absence of sufficient technological assistance for validating complex systems, development teams fall back to relying on human (software developer) anticipation of rare and/or very complex circumstances. Even at our best, humans cannot be expected to catch every issue – especially every intellectually complex, and/or rare issue such as the Issues.

120. Software developers have very effective tools for validating that small pieces of software logic perform correctly but these tools are of limited value for bugs arising from complex interactions between software components (or groups of components) or rare occurrences.

121. State-of-the-art software development tools have not yet reached a point where

[65] I discuss this industry consensus in the Background section of this report.

[66] As discussed in the Background section of the report, existing software testing methodologies and tools are very proficient for identifying software bugs whose conceptual complexity is lower than the complexity of the Issues. Stated differently, for example, more or better unit testing and integration testing would not have caught the Issues.

these complex and rare issues are completely discoverable through automated tools. The Issues arose because they were not detectable by existing software technologies and comprised unusual circumstances that a human developer could not reasonably foresee.

122. Human anticipation of these rare circumstances is a particularly difficult intellectual challenge, and software developers working on complex software projects may face many situations where they must anticipate intellectually complex, rare circumstances. Research teaches that software developers run into practical limits around "cognitive load" when they navigate substantial intellectual complexity around complex software systems.[67,68,69]

123. Software developers can try to distribute, and therefore lessen, the cognitive load on individual developers by using quality assurance processes. Quality assurance processes generally involve multiple software developers working in concert to test different product scenarios. Indeed, Meta is recognized as a leader in software quality assurance techniques including software testing.[70] And Meta utilized a quality assurance process prior to launching the

[67] See, e.g., The Valuable Dev, "The Cognitive Load Theory in Software Development", 27 July 2022, available at https://thevaluable.dev/cognitive-load-theory-software-developer (describing aspects of intellectual challenge, and practical human limits, associated with software development).

[68] Issues with cognitive load are general to humans rather than specific to software developers. Other examples of roles that may involve a heavy cognitive load may include company leaders, parents with children having special needs, and major political leaders such as the President of the United States. I do not mean to suggest that any of these examples involve greater or lesser cognitive load than software developers. Instead, I offer these examples to relate the software developer's situation to people with whom the reader may have some familiarity.

[69] The cognitive load on a developer is influenced by the *number* of issues in the developer's mind but also by the *complexity* of those issues. When the developer carries a large number of very complex issues in their mind, for long periods of time, developer insights that may have occurred under different circumstances may not occur, and bugs may result.

[70] See, e.g., Distefano, D., et al., "Scaling static analyses at Facebook," Communications of the ACM, Vol. 62, No. 8, 2019, pp. 62-70, available at https://cacm.acm.org/magazines/2019/8/238344-scaling-static-analyses-at-facebook/pdf; Meta Research, "Infer," accessed on 9 February 2022, available at https://research.fb.com/downloads/infer; Screenster.io, "Software testing at Facebook and Google in 2018," 26 June 2018, available at https://screenster.io/software-testing-facebook-google (highlighting Meta as "among the biggest trendsetters in [Quality Assurance]"); Meta Engineering, Clyde Rodriguez, "Facebook engineers receive 2021 IEEE Computer Society Cybersecurity Award for static analysis tools", (20 October 2021), available at https://engineering.fb.com/2021/10/20/security/static-analysis-award/.

Messenger Kids product. But nothing, not even a quality assurance process, can *guarantee* that all bugs will be detected–especially bugs that are the result of combinations of numerous rare conditions.

124. Notwithstanding the challenges of detecting bugs in complex software, the commercial software market continues to demand more sophisticated and more capable software. These demands impose ever-increasing complexity on software systems meeting those demands. Thus, the complexity of software systems is increasing such that the increase in coding quality and developer effectiveness is at least partially offset by an increased demand placed on developers as users demand more sophisticated software, which involves far more design complexity, over time.

B. Meta's Use of Overlapping Controls Meaningfully Reduced Impact of the Issues

125. Meta employs overlapping controls, as also discussed in the Background section of this report. The overlapping controls associated with the Issues meaningfully reduced the impact of the Issues as discussed in greater detail below.

126. For the Expired Apps Issue, the 90-Day Limitation was itself an overlapping control with several other measures Meta had in place to limit access to user information as discussed in the Background section of this report, e.g., the requirement that a user allow an app to receive access to its non-public information. For that reason, even in the limited instances where the 90-Day Limitation did not work as developers intended, the sharing of information still only occurred where the user had previously granted the app access to the data and had not revoked it themselves.

127. For the Group Chat and Video Calling Issues with Messenger Kids, overlapping controls (the People Picker and the Approved Contract Check) were implemented to provide multiple mechanisms for validating that Non-Parent-Approved Users were not incorporated within

chat threads.[71]

128. Once the Group Chat Issue was detected, fast resolution of the Approved Contact Check Issue fully mitigated the risk of chat threads with Non-Parent-Approved Users before a fix was implemented for the race condition arising from the double-select operation. Thus, the presence of this overlapping control reduced the impact (duration) of the Group Chat Issue.

129. Meta implemented additional overlapping controls, in response to the Issues, and this investment by Meta reflects further investment in pursuing the highest level of security and best user experience for Meta's users. For example, Meta now validates that all chat participants are Parent-Approved Users on each message sent within Messenger Kids, in addition to performing that validation when a chat thread is created. Indeed, I believe that overlapping controls reflect one of the best investments that could be made by a development team toward mitigating bugs in complex software systems.

130. While these overlapping controls mitigated the impact of the Issues, it does not follow that "some overlapping controls are good, so more overlapping controls must be better." Overlapping controls must be used judiciously or they can make software development unwieldy and lead to separate issues if taken too far. Each overlapping control adds design complexity, testing and validation complexity, and cognitive load for developers. If a logic or feature change must be made in the portion of the software or functionality involving the overlapping controls, a complex evaluation may be needed to ensure that the overlapping controls do not incorrectly prevent the logic or functional change from operating correctly.[72]

131. Overlapping controls also add to the cognitive load for all developers involved with

[71] See discussion of Approved Contact Check in the Background section of this report.

[72] I.e., too many overlapping controls may get in the way of reasonable software development.

a particular functionality. As discussed above, excessive cognitive load can lead to additional bugs that would not occur in the absence of such cognitive load. Thus, excessive use of overlapping controls could lead to mitigating some bugs but could lead to other, separate bugs, thus negatively impacting security or user experience for an application as a whole.

132. The circumstances in which overlapping controls should be used, in light of the trade-offs discussed herein, are sometimes difficult to identify or predict. Some complex circumstances that may lead to bugs are difficult to predict, so the situations where overlapping controls would tend to mitigate the impact of those (difficult to predict) bugs are also difficult to predict (by deduction). To some extent, practical experience and engineering judgment informs where and how overlapping controls should be applied to achieve an appropriate engineering balance of security and user-related benefits without over-engineering the situation with attendant complexity problems and costs.

133. Meta's use of overlapping controls before and after occurrence of the Issues appear reasonably designed to reduce the risk of these unintended events and meet or exceed my expectations for the use of overlapping controls within the industry.

C. Analysis as to Specific Issues

1. Expired Apps Issue

134. In my opinion, the combination of circumstances that led to the Expired Apps Issue would not have been easily detectable by software developers. The number of conditions, and the nature of those conditions necessary to cause the Expired Apps Issue, leads me to conclude that the Expired Apps Issue arose from an unexpected use combination that may not be recognized by a conscientious and capable developer and within an organization employing best design practices.

135. The Expired Apps Issue could seem easy to detect in hindsight, as virtually all bugs

are obvious in hindsight, but it seems to be tangential to the ordinary operation that its existence is not outside the ordinary range of bugs that would be found in almost any commercial software application. As discussed in the Background section of this report, the Expired App Issue only arose when seven different conditions were present at the same time. The combination of these events together presented an access scenario that was atypical relative to the customary way in which apps access data.

136. Further, in my opinion, the speed with which Meta resolved the Expired Apps Issue speaks to the seriousness with which Meta's developers treat security issues within Facebook and exceeds my opinion of industry response times for resolution. Meta's developers created a software change to address the corner case within several days.[73] The developers tested the software change prior to releasing the software change to the public. The developers then performed a canary release to 5% of the public. Meta's developers confirmed that no problems arose from the limited public release, so the software fix was released to all users. No known recurrence of this issue has occurred since the software change discussed herein.

2. Group Chat Issue

137. In my opinion, the combination of circumstances that led to the Group Chat Issue would not have been obvious to Meta developers. An issue caused by an intersection of a very difficult-to-identify race condition, an unexpected double-select operation on Android, and difficult-to-detect removal of an overlapping control, leads me to conclude that the Group Chat Issue was not foreseeable even to conscientious and capable developers operating in an organization employing best design practices on multiple levels.

[73] A more detailed discussion of the circumstances of, and resolution of, the Expired Apps Issue is provided in the Background section of this report.

138. The existence of a race condition, as occurred in this issue, is almost never obvious. The particular set of circumstances that led to this race condition was not obvious and arose in code that was carefully written and reviewed. Removal of the overlapping control, during a code refactoring effort that was intended to produce code performing the same functions but organized differently, was an unintended consequence of the code reorganization that was difficult to detect.[74]

139. I see no practical opportunity to have caught the scenario discussed herein through conventional software testing techniques. The refactoring effort that dropped a portion of the Approved Contact Check code also removed tests associated with that code. Absent such tests, the refactoring problem could only be caught by human detection – a very good but imperfect guarantor of functional correctness, even where, as here, multiple software engineers worked together as part of a quality assurance process. Thus, the combination of these occurrences which led to the Group Chat Issue would have been exceedingly difficult to detect.

140. Meta's resolution of the race condition within two days[75] reflects significant urgency–certainly relative to industry norms. In my opinion, finding and fixing a race condition, within two days, is remarkable. Meta's restoration of the overlapping control within twenty-four hours is commendable. Both resolutions reflect extreme urgency by industry norms.

141. Meta's adoption of multiple additional overlapping controls prior to the issue, for

[74] Refactoring code is known to be a difficult effort and can be prone to introducing bugs in code that lacked those bugs prior to refactoring. Notwithstanding that refactoring can be difficult, refactoring can bring significant technical and practical benefits to a large codebase. This refactoring can lead to fewer bugs that would have occurred in the absence of refactoring because the refactored code base is more organized, more understandable to developers, and the process of refactoring code can lead to design inquiries that identify bugs that exist but had not been recognized yet.

[75] See "White Paper" submitted on behalf of Facebook, Inc., by Michael Rubin to the FTC, dated January 31, 2020 at 8.

example validating that only Parent-Approved Users would receive a chat message and validating that the system was operating as expected, is commendable. After detecting the issue, and quickly remediating the issue, Meta went even further by adopting additional overlapping controls. For example, a watchdog monitoring system was added to Messenger Kids, whereby Meta's systems monitored Messenger Kids communications on recurring intervals to provide an additional level of monitoring as extra user protection. In another example, kill switches were added that would disable some or all Messenger Kids functionality in response to Meta detecting that suspicious or problematic behavior was occurring within Messenger Kids. In an additional example, Meta developers added monitoring that would detect if the performance characteristics of Messenger Kids software varied from historical performance patterns in statistically significant ways. Such variance could indicate that a software bug existed or that an issue with Messenger Kids software was being exploited. Each of these improvements reflects considerable investment into overlapping controls that were not necessary under correct operation of Messenger Kids but would provide greater confidence in the system.

142. These additional checks are ostensibly redundant to the existing check that ensures only Parent-Approved Users can be added to a chat thread, but reflect a decision to employ overlapping controls within Messenger Kids for extra user security and as a best practice.

3. Video Calling Issue

143. In my opinion, the combination of circumstances that led to the Video Calling Issue would not be foreseeable to conscientious and capable developers. Logic was in place that was meant to ensure that escalation did not occur with a video call involving a MK User. However, this logic was inadvertently removed for a period of time. Because this logic was one of a combination of overlapping controls along with the Approved Contact Check, engineers would

not have expected that the removal of the logic could result in MK users communicating with non-Parent-Approved Users. Specifically, Meta developers expected that the Approved Contact Check would have caught escalations with Non-Parent-Approved Users even if escalation was inadvertently enabled.

144. Logic removal events that lead to an unexpected impact, such as happened here, are exceedingly difficult to detect through automated testing because testing logic for a function typically accompanies logic for the function itself. So, removing logic as happened here would also remove testing for that logic.[76] Therefore, software developers operate as a last line of defense for catching such issues (and developers, as with all humans, are imperfect). The nature of this issue is exceedingly difficult for a developer to anticipate. Because the Approved Contact Check was expected to prevent escalations with Non-Parent-Approved Users, the interplay of inadvertently removing the Approved Contact Check and removing the logic discussed herein was not foreseeable.

145. Notwithstanding, overlapping controls reduced the significance of the logic removal events. The Approved Contact Check prevented any messaging between the Non-Parent-Approved User and the MK User during or after the video call. Thus, contact between those users was limited to the duration of the video call.

146. Meta's developers resolved these issues quickly. A first unforeseen logic removal event, within iOS code for Messenger Kids, was identified and resolved in January 2019. A second (subsequent) unforeseen logic removal event, within Android code for Messenger Kids, was identified and resolved in July 2019. This second unforeseen logic removal event was corrected

[76] Tests for such logic are typically included in files closely associated with the logic itself. The logic, and tests for the logic, are typically included or excluded together. Thus, inadvertent removal of logic tends to also remove testing for that logic.

within one day of identification.

147. Resolving a software issue within one day reflects very fast resolution by industry standards. That prompt resolution is consistent with Meta placing great emphasis on user security and ensuring a very good user experience.

VI. CONCLUSION

148. Bugs are an unavoidable aspect of designing software and all software companies release software to the public that contains bugs. No company/team creates software (or hardware) that has zero bugs. Therefore, the existence of software implies the existence of some bugs.

149. Bugs will exist in complex software systems even where conscientious developers and best software development practices exist. Facebook and Messenger Kids are complex software systems. Therefore, bugs will exist in Facebook and Messenger Kids despite best efforts to avoid such bugs.

150. Most bugs seem "obvious" or "foreseeable" once they have been identified. Most bugs arise from unanticipated corner cases, in one form or another. The hard part of designing high-quality software is anticipating corner cases that are not apparent or top of mind at the time the software is created, or modified, even when cutting-edge design processes and very effective team communications occur.

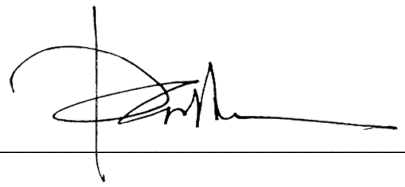
151. The Issues reflect unanticipated corner cases that could have occurred when using Facebook or Messenger Kids during the time periods when the bugs existed and would have been very difficult to detect during software development.

152. Use of overlapping controls, as existed in Facebook and Messenger Kids code, reflects additional development effort invested by Meta engineers toward developing high-quality software that meets users' needs and reflects additional system complexity that developers must

navigate as these applications evolve. Use of overlapping controls reduced the impact of the three bugs or "issues" referenced in the FTC's Order to Show Cause: the Expired Apps Issue; the Group Chat Issue; and the Video Calling Issue. Building redundancy into complex systems is well established as a best practice, and use of overlapping controls provided a tangible benefit for the Issues.

153. After identification, Meta fixed the Issues in less time than would be expected within the industry for issues of this nature.

The statements in this report are true and correct to the best of my knowledge.



DAVID MARTENS

3/13/2024

DATE

APPENDIX A: CURRICULUM VITAE

David Martens

303 Midenhall Way, Cary, NC 27513
(415) 235-8886 – dave@intuityconsultants.com

Education

Stanford University, MS in Electrical Engineering (emphasis in comp. architecture, software, and circuits) University of Wisconsin, Platteville, BS in Electrical Engineering
Santa Clara University, JD (emphasis in IP law)

Employment

Intuity Consultants, Inc. and Intuity, P.C.	6406 McCrimmon Pkwy, Suite 300, Morrisville, NC
Software and Hardware Consultant and Attorney	July 2016 – present
Winston & Strawn LLP	San Francisco, CA
Attorney	2013-2016
Finnegan, Henderson, Farabow, Garrett & Dunner LLP	Palo Alto, CA
Attorney and Student Associate	2008 – 2013
Nixon & Peabody, LLP	San Francisco, CA
Summer Associate and Law Clerk	2007-2008
Expressed Innovation, Inc.	San Francisco Bay Area, CA
Software and Hardware Consultant	2005-2007
Sun Microsystems	Sunnyvale, CA
Engineering Manager, Technical Lead, and Design Engineer	1998 – 2004
IBM	Austin, TX
Design Engineer	1995 - 1998
Intel	Sacramento, CA
Design and Development Engineer	1990 – 1995

Professional Society Memberships

IEEE (Solid State Circuits and Computer Societies); ACM

Litigations and Clients (Last 10 Years)

SitNet, LLC v. Meta Platforms, Inc.; 1:23-cv-06389; Southern District of New York; engaged by Davis Polk & Wardwell LLP for Meta; 2024

WhatsApp, LLC, et al. v. NSO Group Techs. Ltd. et al.; 4:19-cv-07123; Northern District of California; engaged by Davis Polk & Wardwell LLP for Meta and WhatsApp; 2023-24

Pantech Corp. et al. v. LG Electronics, Inc. et al.; 5:22-cv-00113; Eastern District of Texas; engaged by Mayer Brown, LLP for Pantech; 2023-24

FTC v. Meta Platforms, Inc.; Federal Trade Commission docket C-4365; engaged by Latham & Watkins LLP for Meta; 2023-24

Touchstream Technologies, Inc. v. Comcast Cable Communications, LLC, et al.; 2:23-cv-00062; Eastern District of Texas; engaged by Davis Polk & Wardwell LLP for Comcast; 2023-24

Fiskars Finland Oy Ab et al. v. Woodland Tools, Inc. et al.; 3:22-cv-00540; Western District of Wisconsin; engaged by DeWitt LLP for Woodland Tools; 2023-24

BMG Rights Management LLC, et al., v. Altice USA, Inc., et al.; 2:22-cv-00471; Eastern District of Texas; engaged by Winston & Strawn LLP for Altice; 2023-24

Lexos Media IP, LLC v. Office Depot, LLC; 2:22-cv-00283; Eastern District of Texas; engaged by Perkins Coie LLP for Office Depot; 2023-24

BSD Crown, LTD v. Amazon.com, Inc., et al.; 3:23-cv-00057; Northern District of California; engaged by Perkins Coie LLP for Amazon and Twitch; 2023-24

B.E. Tech, LLC v. Twitter, Inc.; 1:20-cv-00621; District of Delaware; engaged by Wilmer Cutler Pickering Hale and Dorr for Twitter; 2023

Meta Platforms, Inc. v. Bright Data Ltd.; 3:23-cv-00077; Northern District of California; engaged by Wilmer Cutler Pickering Hale and Dorr for Meta; 2023

Lexos Media IP, LLC v. Amazon.com, Inc.; 2:22-cv-00169; Eastern District of Texas; engaged by Perkins Coie LLP for Amazon; 2023

SupplyPro, Inc. v. Sandvik Machining Solutions AB et al.; 01-22-0000-7897; American Arbitration Association; engaged by Morgan Lewis & Bockius LLP for Sandvik; 2023

Zilkr Cloud Technologies, LLC v. Cisco Systems Inc.; 2:22-cv-00166; Eastern District of Texas; engaged by Winston & Strawn LLP for Cisco; 2023

Eight KHZ, LLC v. Meta Platforms, Inc.; 6:22-cv-00575; Western District of Texas; engaged by Latham & Watkins LLP for Meta; 2022-23

Broadcom et al. v. Netflix; 3:20-cv-04677; Northern District of California; engaged by Keker, Van Nest & Peters LLP for Netflix; 2022-23

Abbott Diabetes Care Inc. et al. v. Dexcom, Inc.; 1:21-cv-00977; District of Delaware; engaged by Keker, Van Nest & Peters LLP for Dexcom; 2022-23

VidStream, LLC v. Twitter, Inc.; 3:16-cv-00764; Northern District of Texas; engaged by Wilmer Cutler Pickering Hale and Dorr for Twitter; 2022-23

UMG Recordings v. Charter Communications; 1:21-cv-02020; District of Colorado; engaged by Winston & Strawn LLP and Quinn Emanuel Urquhart & Sullivan LLP for Charter Communications; 2022

Koninklijke Philips N.V. and Philips North America LLC v. Intel Corp.; 1:20-cv-01243; District of Delaware; engaged by Perkins Coie LLP for Intel; 2022

In the Matter of Certain Digital Set-top Boxes and Systems and Services Including the Same; USITC Inv. No. 337-TA-1315; engaged by Davis Polk & Wardwell LLP on behalf of Comcast against Broadband iTV; 2022-23

IPS Logistix, LLC v. EasyShip, Inc.; 21-CI-01131; Commonwealth of Kentucky, Boone Co. Circuit Court; engaged by Winston & Strawn LLP for EasyShip; 2022

Applications in Internet Time v. Salesforce; 3:13-cv-00628; District of Nevada; engaged by King & Wood Mallesons for Applications in Internet Time; 2022

VideoShare, LLC v. Meta Platforms, Inc.; 6:21-cv-00254; Western District of Texas; engaged by Kilpatrick Townsend & Stockton LLP for Meta Platforms; 2022-23

Gentex Corp. and Indigo Techs., LLC v. Facebook, Inc. and Facebook Technologies, LLC; 6:21-cv-00755; Western District of Texas; engaged by Kirkland & Ellis LLP for Facebook and Facebook Technologies; 2022

VOIP-PAL.com, Inc. v. Meta Platforms, Inc. and WhatsApp, LLC; 6:21-cv-00665; Western District of Texas; engaged by Kirkland & Ellis LLP for Meta and WhatsApp; 2022-23

Highmark Digital, Inc. v. Casablanca Design Centers, Inc. et al.; 2:18-cv-06105; Central District of California; engaged by both parties as neutral expert; 2021-22

MOTDgd v. Playwire, LLC; 0:20-cv-60199; Southern District of Florida; engaged by Gordon Rees Scully Mansukhani, LLP for Playwire; 2021-22

Facebook v. BrandTotal, Ltd. and Unimania, Inc.; 3:20-cv-07182; Northern District of California; engaged by Wilmer Cutler Pickering Hale and Dorr for Facebook; 2021-22

802 Systems v. Cisco Systems, Inc.; 2:20-cv-00315; Eastern District of Texas; engaged by Winston &

Strawn LLP for Cisco; 2021

Streamscale, Inc. v. Intel Corp.; 6:21-cv-00198; Northern District of California; engaged by Wilmer Cutler Pickering Hale and Dorr for Intel; 2021

Zoho Corp. Pvt. Ltd, v. Freshworks, Inc.; 3:20-cv-01869; Northern District of California; engaged by Keker, Van Nest & Peters LLP for Freshworks; 2021

Peters et al. v. Infor, Inc.; 3:19-cv-08102; Northern District of California; engaged by Keker, Van Nest & Peters LLP for Infor; 2021

Stross, Ledergerber, Walmsley and Kuhmstetd v. Netease (four related cases); 2:20-cv-00861, 862, 863 and 2044; Central District of California; engaged by Doniger/Burroughs; 2021

Teradata US, Inc. et al. v. SAP; 3:18-cv-03670; Northern District of California; engaged by Morrison Foerster for Teradata; 2021

Onstream Media Corp. v. Facebook, Inc.; 6:19-cv-00708; Western District of Texas; engaged by Latham & Watkins LLP for Facebook and Instagram; 2021

Ericsson et al. v. Samsung et al.; *Certain Electronic Devices With Wireless Connectivity, Components Thereof, and Products Containing Same*; ITC Investigation 337-TA-1245; engaged by Winston & Strawn LLP for Ericsson; 2021

JBF Interlude 2009 Ltd. et al. ("eko") v. Quibi Holdings et al., 2:20-cv-02250 and 2:20-cv-02299; Central District of California; engaged by Goodwin Procter LLP for eko; 2021

Via Vadis et al. v. Amazon; 1:14-cv-00813; and *Via Vadis et al. v. Blizzard Entertainment*; 1:14-cv-00810; Western District of Texas; engaged by Perkins Coie LLP for Amazon and Blizzard; 2021

DZ Reserve v. Facebook et al.; 3:18-cv-04978; Northern District of California; engaged by Latham & Watkins LLP for Facebook; 2020

MasterObjects, Inc. v. Facebook, Inc.; 6:20-cv-00087; Western District of Texas; engaged by Latham & Watkins LLP for Facebook; 2020-21

Exafer v. Microsoft, 6:19-cv-00687; Western District of Texas; engaged by Winston & Strawn LLP for Microsoft; 2020-21

Voxer and Voxer IP, LLC v. Facebook and Instagram; 6:20-cv-00011 and 1:20-cv-00655; Western District of Texas; engaged by Keker, Van Nest & Peters LLP for Facebook and Instagram; 2020-21

UMG Recordings v. Bright House Networks; 8:19-cv-00710; Middle District of Florida; *Warner Records v. Charter Communications*, 19-cv-00874; District of Colorado; engaged by Winston & Strawn LLP for Bright House Networks and Charter Communications; 2020-21

NexStep v. Comcast Corp.; 1:19-cv-01031; District of Delaware; engaged by Wilmer Cutler Pickering Hale and Dorr for Comcast; 2020-21

XMTT, Inc. v. Intel Corporation; 1:18-cv-01810; District of Delaware; engaged by Desmarais IP for Intel; 2020- 22

Pre-litigation assistance to AirBNB; engaged by Winston & Strawn LLP; 2020

SpaceTime3D v. Samsung; 2:19-cv-00372; Eastern District of Texas; engaged by Susman Godfrey for SpaceTime3D; 2019-20

ARENDI S.A.R.L. v. Motorola Mobility; C.A. No. 12-1601; District of Delaware as well as *ARENDI S.A.R.L. v. LG Electronics et al.*, C.A. No. 12-1595, *ARENDI S.A.R.L. v. Apple, Inc.*, C.A. No. 12-1596, *ARENDI S.A.R.L. v. Blackberry*, C.A. No. 12-1597, *ARENDI S.A.R.L. v. Nokia et al.*, C.A. No. 12-1599, *ARENDI S.A.R.L. v. Sony et al.*, C.A. No. 12-1602, and *ARENDI S.A.R.L. v. Yahoo!/Verizon*, C.A. No. 13-0920; engaged by Susman Godfrey for ARENDI; 2019-20

Promptu Systems Corp. v. Comcast Corp.; 2:16-cv-06516; Eastern District of Pennsylvania; engaged by Keker, Van Nest & Peters LLP for Comcast; 2019-21

Vir2us, Inc. v. Sophos, Inc., et al.; 2:19-cv-00018; Eastern District of Virginia; engaged by Bartko Zankel for Vir2us; 2019

Tabaian v. Intel, Inc.; 3:18-cv-00326; District of Oregon; engaged by Wilmer Cutler Pickering Hale and Dorr for Intel; 2019

Resideo Techs. v. Ubiquitous Connectivity; IPR2019-01335 and -01336; engaged by Heninger, Garrison & Davis for Ubiquitous; 2020

Askeladden v. Electronic Receipts Delivery Systems; IPR2020-01406 and -01407; engaged by Amster, Rothstein & Ebenstein; 2020

X-One, Inc. v. Uber Technologies, Inc., 5:16-cv-06050; Northern District of California; engaged by Finnegan Henderson Farabow Garrett & Dunner LLP for X-One; 2018

Rovi Guides, Inc. v. Comcast; 337-TA-1158 ITC investigation plus companion case in the Central District of California (2:19-CV-00275); engaged by Davis Polk & Wardwell LLP for Comcast; 2019-20

LeadFactors v. Cisco; 1:13-cv-24792; Superior Court for the County of Santa Clara, California; engaged by Winston & Strawn LLP for Cisco; 2019

Realtime Adaptive Streaming LLC v. Comcast; 1:18-cv-01446; District of Colorado; engaged by Farella Braun + Martell LLP for Comcast; 2019-21

Motorola Solutions v. Hytera Communications Corp. Ltd. et al.; Federal Court of Australia Proceeding No. 1283/2017; engaged by Shelston IP for Hytera; 2019

Motorola Solutions v. Hytera Communications; 1:17-cv-01973; Northern District of Illinois; engaged by Steptoe and Johnson for Hytera; 2018-19

VLSI Technology v. Intel; 1:18-cv-00966; District of Delaware; engaged by Wilmer Cutler Pickering Hale and Dorr for Intel; 2018

Rovi Guides Inc./TiVo/Veveo v. Comcast; 337-TA-1103 ITC investigation plus companion cases in the Central District of California (2:18-cv-00253) and District of Massachusetts (1:18-cv-10056); engaged by Davis Polk & Wardwell LLP, Latham & Watkins LLP, and Winston & Strawn LLP for Comcast; 2018

Seven Networks v. Google; 2:17-cv-00442; ED of Texas; engaged by Quinn Emanuel Urquhart & Sullivan LLP for Google; 2018

Non-litigation legal analysis for Intel on microprocessor circuit technology; 2018

VLSI Technology v. Intel; 5:17-cv-05671; Northern District of California; engaged by Wilmer Cutler Pickering Hale and Dorr for Intel; 2018

Arya Risk Management Systems v. Dufossat Capital Puerto Rico et al.; 4:16-cv-03595; Southern District of Texas; engaged by Heygood, Orr & Pearson for Arya; 2018

Ubiquitous Connectivity v. City of San Antonio; 5:18-cv-00718; Western District of Texas; engaged by Heninger Garrison Davis for Ubiquitous Connectivity; 2018

Non-litigation technical analysis of products for Salesforce; 2018

MacroPoint, LLC v. Ruiz Food Products, Inc.; 6:16-cv-01133; Eastern District of Texas; engaged by Thompson Hine, LLP for MacroPoint; 2018

OpenTV et al. v. Comcast Corp. et al.; 337-TA-1041 ITC investigation plus companion cases in the Northern District of California (3:16-cv-06180) and Eastern District of Texas (2:16-cv-01362); engaged by Keker, Van Nest & Peters LLP; 2017

Acceleration Bay v. Electronic Arts/TakeTwo/Activision; 1:16-cv-00454; District of Delaware; engaged by Winston & Strawn LLP for EA/TakeTwo/Activision; 2017-18

Vir2us v. Cisco; 4:16-cv-06988; Northern District of California; engaged by Bunsow, De Mory, Smith & Allison for Vir2us; 2017

Umbanet v. Epsilon Data Management; 2:16-cv-00682; Eastern District of Texas; engaged by SpencePC for Umbanet; 2017

Rovi Guides, Inc. v. Comcast; 337-TA-1001 ITC investigation plus companion case in Southern District of New York (1:16-cv-09278); engaged by Winston & Strawn LLP for Comcast; 2016-18

Non-litigation legal analysis relating to USB technology for HP, Inc.; 2017-18

Ericsson v. Apple; 337-TA-952 ITC investigation; represented Ericsson while at Winston & Strawn LLP; 2015

Non-litigation analysis relating to integrated circuit fabrication technology for TSMC while at Winston & Strawn LLP; 2015

Macronix v. Spansion; 337-TA-909 ITC investigation; represented Macronix while at Winston & Strawn LLP; 2013-14

Spansion v. Macronix; 337-TA-893 ITC investigation; represented Macronix while at Winston & Strawn LLP; 2013-14

VIA Technologies v. Apple; 337-TA-812 ITC investigation; represented VIA Technologies while at Finnegan; 2011-12

Brocade Communications Systems, Inc. v. A10 Networks, Inc.; 5:10-cv-03428, Northern District of California; represented A10 Networks while at Finnegan; 2011-12

EIDOS Display, LLC et al. v. AU Optronics Corp. et al.; 6:11-cv-00201, Eastern District of Texas; represented Hann-Star Display Corp. while at Finnegan; 2011-12

Appearances in Deposition or at Trial (Last 5 Years)

Zilkr Cloud Technologies, LLC v. Cisco Systems Inc.; 2:22-cv-00166; Eastern District of Texas; engaged by Winston & Strawn LLP for Cisco; 2023 (testified in court at discovery hearing)

Facebook v. BrandTotal, Ltd. and Unimania, Inc.; 3:20-cv-07182; Northern District of California; engaged by Wilmer Cutler Pickering Hale and Dorr for Facebook; 2021 (was deposed but case settled before trial)

Peters et al. v. Infor, Inc.; 3:19-cv-08102; Northern District of California; engaged by Keker, Van Nest & Peters LLP for Infor; 2021 (was deposed; case settled before trial)

Stross, Ledergerber, Walmsley and Kuhmstetd v. Netease (four related cases); 2:20-cv-00861, 862, 863 and 2044; Central District of California; engaged by Doniger/Burroughs; 2021 (was deposed twice; settled before trial)

Vir2us, Inc. v. Sophos, Inc. et al.; 2:19-cv-00018; Eastern District of Virginia; engaged by Bartko Zankel for Vir2us; 2019 (was deposed; case settled just before trial)

Engagements Involving an Expert Report or Declaration (Last 5 Years)

Fiskars Finland Oy Ab et al. v. Woodland Tools, Inc. et al.; 3:22-cv-00540; Western District of Wisconsin; engaged by DeWitt LLP for Woodland Tools; 2023-24 (wrote an expert report)

Facebook v. BrandTotal, Ltd. and Unimania, Inc.; 3:20-cv-07182; Northern District of California; engaged by Wilmer Cutler Pickering Hale and Dorr for Facebook; 2021 (wrote an expert report)

Peters et al. v. Infor, Inc.; 3:19-cv-08102; Northern District of California; engaged by Keker, Van Nest & Peters LLP for Infor; 2021 (wrote an expert report)

Stross, Ledergerber, Walmsley and Kuhmstetd v. Netease (four related cases); 2:20-cv-00861, 862, 863 and 2044; Central District of California; engaged by Doniger/Burroughs; 2021 (wrote an expert report)

Vir2us, Inc. v. Sophos, Inc. et al.; 2:19-cv-00018; Eastern District of Virginia; engaged by Bartko Zankel for Vir2us; 2019 (wrote an expert report and declaration)

Arya Risk Management Systems v. Dufossat Capital Puerto Rico et al.; 4:16-cv-03595; Southern District of Texas; engaged by Heygood, Orr & Pearson for Arya Risk Management; 2018 (wrote an expert report)

Patents (No Ownership Interest)

- 6,233,642 – Method for wiring a 64-bit rotator to maximize performance and minimize area
- 6,111,434 – Chargeshare protection for domino circuits
- 5,970,512 – Method for creating a faster lookup in microprocessor translation look-aside buffer
- 5,907,866 – Block Address Translation comparison circuit translator
- 5,864,571 – Error detection circuit with encoder
- 5,751,727 – Dynamic latch for use in dynamic memory arrays

APPENDIX B: MATERIALS RELIED UPON FOR OPINION

The opinions rendered in this expert report are based on my review of the following materials (listed in chronological order):

- Meta, "Introducing Anonymous Login and an Updated Facebook Login", 30 April 2014, available at https://about.fb.com/news/2014/04/f8-introducing-anonymous-login-and-an-updated-facebook-login
- Loren Cheng (Meta Product Management Director), "Introducing Messenger Kids, a New App for Families to Connect", 4 December 2017, available at https://about.fb.com/news/2017/12/introducing-messenger-kids-a-new-app-for-families-to-connect
- Meta, "We Just Made It Easier To Add More Friends and Family to Your Messenger Audio and Video Chats", 21 February 2018, available at https://about.fb.com/news/2018/02/we-just-made-it-easier-to-add-more-friends-and-family-to-your-messenger-audio-and-video-chats/
- Meta, "An Update on Our Plans to Restrict Data Access on Facebook", 4 April 2018, available at https://about.fb.com/news/2018/04/restricting-data-access/
- Meta, "Data Abuse Bounty: Facebook Rewards for Reports of Data Abuse", 10 April 2018, available at https://about.fb.com/news/2018/04/data-abuse-bounty/
- Screenster.io, "Software testing at Facebook and Google in 2018," 26 June 2018, available at https://screenster.io/software-testing-facebook-google
- Facebook, Inc.'s Nov. 15, 2019 Responses to Specifications for (A) Interrogatory Responses and (B) Production of Documents in the Federal Trade Commission's Civil Investigative Demand, Dated October 8, 2019
- Distefano, D., et al., "Scaling static analyses at Facebook," Communications of the ACM, Vol. 62, No. 8, 2019, pp. 62-70, available at https://cacm.acm.org/magazines/2019/8/238344-scaling-static-analyses-at-facebook/pdf
- "White Paper" submitted on behalf of Facebook, Inc., by Michael Rubin to the FTC, dated January 31, 2020
- Letter from Michael Rubin to Reenah Kim and Linda Hollerman Kopp, both of the FTC, dated July 14, 2020
- Letter from Michael Rubin to Reenah Kim and Linda Hollerman Kopp, both of the FTC, dated August 5, 2020
- Letter from Michael Rubin to Linda Hollerman Kopp, of the FTC, Regarding Documents Responsive to Specifications 1 and 2, dated August 31, 2020
- Letter from Michael Rubin to Linda Hollerman Kopp, of the FTC, Regarding Responses to Questions She Posed by Phone on March 25, 2021, dated April 6, 2021
- "White Paper" submitted on behalf of Facebook, Inc., by Michael Rubin, Serrin Turner and Marissa Boynton to the FTC, dated July 28, 2021

- Meta Engineering, Clyde Rodriguez, "Facebook engineers receive 2021 IEEE Computer Society Cybersecurity Award for static analysis tools", 20 October 2021, available at https://engineering.fb.com/2021/10/20/security/static-analysis-award/
- Meta, "Introducing Meta: A Social Technology Company", 28 October 2021, available at https://about.fb.com/news/2021/10/facebook-company-is-now-meta/
- Beta Breakers, "The Ultimate Guide to Software Bugs", 29 June 2022, available at https://www.betabreakers.com/the-ultimate-guide-to-software-bugs
- The Valuable Dev, "The Cognitive Load Theory in Software Development", 27 July 2022, available at https://thevaluable.dev/cognitive-load-theory-software-developer
- Neta Oren (Meta Bug Bounty Lead), "Looking Back at Our Bug Bounty Program in 2022", 15 December 2022, available at https://about.fb.com/news/2022/12/metas-bug-bounty-program-2022/
- David Heinemeier Hansson, "Software has bugs. This is normal.", 7 February 2023, available at https://world.hey.com/dhh/software-has-bugs-this-is-normal-26d5fd06
- BrowserStack, "7 Common Types of Software Bugs Every Tester Should Know", 21 March 2023, available at https://www.browserstack.com/guide/types-of-software-bugs
- Meta, "Meta Bug Bounty Program", last updated 24 August 2023, available at https://www.facebook.com/whitehat
- Facebook Help Center, "Adjust who can see your Friends section on Facebook", accessed on 22 February 2024, available at https://www.facebook.com/help/115450405225661
- Facebook Help Center, "How to manage the privacy settings for apps, websites and games that you've logged into or connected on Facebook", accessed on 22 February 2024, available at https://www.facebook.com/help/218345114850283
- BrowserStack, "Selenium Testing: Detailed Guide", accessed on 22 February 2024, available at https://www.browserstack.com/selenium
- AWS, "Automated Testing Tools: AWS Device Farm", accessed on 22 February 2024, available at https://aws.amazon.com/device-farm/
- Vikash Sharma, "A Comprehensive Guide to Software Testing Costs", accessed on 22 February 2024, available at https://www.sparxitsolutions.com/blog/software-testing-cost
- Meta Research, "Infer," accessed on 22 February 2024, available at https://research.fb.com/downloads/infer
- Printout Concerning Production SEV S180796 ("Kids can have unapproved contact in a group chat")
- Printout Concerning Production SEV S182073 ("Group video call (RTC) possible with unapproved contact")

- Printout Concerning Production SEVs S203906 ("Some Expired Permissions Can [sic] Accessible via Friends API") and S206516 ("3rd Party Permissions can be Infinitely Refreshed for IG Basic Display API")