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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

META PLATFORMS, INC., et al.,

Defendants.

Case No. 5:22-cv-04325-EJD

~~[PROPOSED]~~ JOINT STIPULATED
DISCOVERY PLAN AND BRIEFING
SCHEDULE

1 **[PROPOSED] JOINT STIPULATED DISCOVERY PLAN AND BRIEFING SCHEDULE**

2 Plaintiff Federal Trade Commission (“FTC” or “Commission”) has met and conferred
3 with Defendants Meta Platforms, Inc. (“Meta”) and Within Unlimited, Inc. (“Within”)
4 (collectively, “Defendants”) as required under Civil Local Rule 16-3. The FTC, Meta, and
5 Within jointly submit this [PROPOSED] JOINT STIPULATED DISCOVERY PLAN AND
6 BRIEFING SCHEDULE pursuant to the Standing Order for All Judges of the Northern District
7 of California and Civil Local Rule 16-9. This submission supplements the parties’ Joint
8 Stipulated Case Management Order filed on August 12, 2022.

9 **A. DISCOVERY SCHEDULE**

10 1. The parties’ stipulated discovery and briefing schedule is attached as Exhibit A.

11 **B. FACT DISCOVERY**

12 1. Discovery Disputes. In order to ensure that all discovery disputes, including with
13 non-parties, are resolved expeditiously and in a manner consistent with this Court’s
14 schedule in this proceeding, the parties respectfully request that all motions to compel
15 and/or motions to quash in this case be presented to Magistrate Judge van Keulen for
16 prompt resolution pursuant to procedures she shall adopt for that purpose.

17 2. Document Requests and Production. No more than 25 document requests shall be
18 served on any named party or non-party. The parties shall serve any objections to
19 requests for the production of documents no later than seven (7) calendar days after
20 the date of service of the document requests to which they assert objections. Within
21 three (3) calendar days of service of any such objections, the parties shall meet and
22 confer in a good faith attempt to resolve the objections. The parties shall make good
23 faith efforts to substantially comply with requests for production no later than thirty
24 (30) calendar days after the date of service, provided that rolling productions begin
25 within twenty-one (21) calendar days of service.

26 3. Interrogatories. The parties shall serve no more than 10 interrogatories per side. The
27 parties shall serve objections and responses to interrogatories no later than fourteen
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1 (14) calendar days after the date of service. Within three (3) calendar days of service
2 of any such objections, the parties shall meet and confer in a good faith attempt to
3 resolve the objections.

4 4. Exchange of Final Lists of Fact Witnesses to Appear at Hearing. Final fact witness
5 lists shall be exchanged on or before 5:00 p.m. Eastern time on the date listed in
6 Exhibit A for exchange of final fact witness lists. Final fact witness lists shall
7 summarize the general topics of each witness's anticipated testimony. Only witnesses
8 previously identified in the preliminary fact witness lists and/or deposed in the matter
9 shall be permitted on the final fact witness lists. The final fact witness lists shall
10 represent a good faith effort to identify all fact witnesses the producing party expects
11 that it may present at the evidentiary hearing, other than solely for impeachment.
12 Additional witnesses may be added to the final witness list after the date for exchange
13 of final fact witness lists in Exhibit A only by agreement of the parties or with leave
14 of the Court for good cause shown. No witness shall be permitted at trial unless the
15 opposing side had a reasonable opportunity to depose the witness before trial.

16 5. Depositions.

17 a. Number of Depositions. Each side may depose any witness who (i) is listed
18 on either side's preliminary witness list; (ii) is listed on the other side's final
19 party or non-party witness lists; or (iii) provides a declaration or affidavit.
20 Notwithstanding the foregoing, each side may take a maximum of twenty-five
21 (25) depositions, including 30(b)(6) depositions, of non-party witnesses.
22 Additional depositions of fact witnesses shall be permitted only by agreement
23 of the parties or by leave of the Court for good cause shown. The parties shall
24 use reasonable efforts to reduce the burden on witnesses noticed for
25 depositions and to accommodate the witness's schedule.

26 b. Allocation of Time. All depositions, including depositions of fact and expert
27 witnesses, including 30(b)(6) depositions, shall last no more than seven (7)
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1 hours on the record, except (i) if both Plaintiff and Defendants notice any non-
2 party fact deposition, the deposition will be ten (10) hours and will be divided
3 equally between the sides, although if either side uses fewer than two hours to
4 question the witness, the other party may use half of the unused time; and (ii)
5 if either Plaintiff or Defendants has obtained a sworn declaration from the
6 deponent, the maximum time shall be allocated five (5) hours to the side that
7 did not obtain the declaration, and two (2) hours for the side that obtained the
8 declaration. For purposes of this Joint Stipulated Discovery Plan and Briefing
9 Schedule, former employees, consultants, agents, contractors, or
10 representatives of the parties are considered party witnesses. Unused time in
11 any side's allocation of deposition time shall not transfer to the other side.

12 **C. EXPERT DISCOVERY**

- 13 1. Expert Depositions. One seven-hour deposition of each expert shall be allowed.
- 14 2. Expert Materials Not Subject to Discovery. Expert disclosures, including each side's
15 expert reports, shall comply with the requirements of Federal Rule of Civil Procedure
16 26(a)(2), except as modified herein:
- 17 a. Neither side must preserve or disclose, including in expert deposition testimony,
18 the following documents or materials:
- 19 i. any form of communication or work product shared between any of
20 the parties' counsel and their expert(s) or consultants, or between
21 any of the experts or consultants themselves;
- 22 ii. any form of communication or work product shared between an
23 expert(s) and persons assisting the expert(s);
- 24 iii. expert's notes, unless they are expressly relied upon and/or cited in
25 support of an opinion or fact;
- 26 iv. drafts of expert reports, analyses, or other work product; or
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- v. data formulations, data runs, data analyses, or any database-related operations not relied upon by the expert in the opinions contained in his or her final report, except as set forth in 2(b).
- b. The parties agree that they will disclose the following materials with all expert reports:
 - i. a list by Bates number of all documents relied upon by the testifying expert(s); and copies of any materials relied upon by the expert not previously produced that are not readily available publicly;
 - ii. for any calculations appearing in the report, all data and programs underlying the calculation, including all programs and codes necessary to recreate the calculation from the initial (“raw”) data files.

1 **D. MOTIONS AND BRIEFING**

- 2 1. Plaintiff's memorandum in support of its motion for a preliminary injunction is not to
3 exceed 25 pages.
- 4 2. Defendants' opposition to Plaintiff's motion for a preliminary injunction is not to
5 exceed 25 pages.
- 6 3. Plaintiff's reply memorandum support of its motion for a preliminary injunction is not
7 to exceed 15 pages.
- 8 4. Each side's proposed pre-trial findings of fact and conclusions of law, collectively,
9 shall not exceed 50 pages.
- 10 5. Any briefs in support of, or in opposition to, motions in limine, including any Daubert
11 motions, shall not exceed 10 pages.
- 12 6. Each side's post-trial proposed findings of fact and conclusions of law shall not
13 exceed 100 pages.

14 **E. OTHER ISSUES**

- 15 1. Privilege Log. The parties agree to suspend the obligations of Federal Rule of Civil
16 Procedure 26(b)(5)(A) to produce a log of privileged materials withheld from
17 discovery taken in this action (excluding Defendants' productions made during the
18 course of the FTC's pre-complaint investigation). Notwithstanding the foregoing, the
19 parties shall individually log withheld materials that are authored by, addressed to, or
20 received from any non-party; and will categorically log materials that are (1) internal
21 to a party that are not authored by, sent to, or received from the party's attorneys or
22 employed FTC staff economists from the Bureau of Economics, unless such person
23 serves as an expert or submits any written or oral testimony in this matter; (2)
24 authored by, addressed to, or received from any party executive who serves both in-
25 house business and legal roles; (3) authored by, addressed to, or received from any
26 executive who has a law degree, even if the executive is not a practicing attorney; and
27 (4) authored by, addressed to, or received from any domestic or foreign regulatory
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1 authorities. For purposes of this paragraph, a “non-party” excludes a party’s retained
2 expert and employees of such expert within the meaning of Federal Rule of Civil
3 Procedure 26(b). The parties shall preserve all documents responsive to a discovery
4 request that they withhold pursuant to a claim of privilege or protection.

5 2. Modification of Scheduling and Case Management Order. Any party may seek
6 modification of this Order for good cause, except that the parties may also modify
7 discovery and expert disclosure deadlines by agreement.

8 3. Reservation of Rights. Nothing in this Discovery Plan shall limit the parties’ ability
9 to object to, move to quash, or otherwise challenge any request for discovery or
10 deposition notice under the Federal Rules of Civil Procedure.

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EXHIBIT A: PROPOSED SCHEDULE

Event	Date(s)
Discovery Commences	August 12, 2022
Plaintiff's Preliminary Fact Witness Lists	September 2, 2022
Defendants' Preliminary Fact Witness Lists	September 8, 2022
Deadline to Serve Written Discovery to Parties	September 12, 2022
Close of Party Fact Discovery	October 26, 2022
Plaintiff Serves Initial Expert Report(s)	October 27, 2022
File and Exchange of Final Party Fact Witness Lists	October 28, 2022 at 5 p.m. Eastern Time
Plaintiff's Memorandum of Law in Support of Preliminary Injunction Motion	October 31, 2022
Defendants Serve Expert Report(s) and file	November 11, 2022
Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction	November 14, 2022
File and Exchange of Final Non-Party Fact Witness Lists	November 18, 2022 at 5 p.m. Eastern Time
File and Exchange of Exhibit Lists	November 18, 2022 at 5 p.m. Eastern Time
Close of Non-Party Fact Discovery	November 18, 2022
Plaintiff Serves Rebuttal Expert Report(s) and files	November 21, 2022
Pre-Hearing Proposed Findings of Fact and Conclusions of Law	November 21, 2022
Plaintiff's Reply to Defendants' Opposition to Preliminary Injunction Motion	November 21, 2022

Event	Date(s)
Last Day for Motions <i>In Limine</i> to Be Filed	November 28 ²¹ , 2022
Close of Expert Discovery	December 5, 2022
Last Day for Responses to Motions <i>In Limine</i> to Be Filed	November 28 December 5 , 2022
Post-Hearing Proposed Findings of Fact and Conclusions of Law	To be determined by the Court

This order has been entered after consultation with the parties.

PURSUANT TO STIPULATION, IT IS SO ORDERED, this 6th day of
September, 2022.



Honorable Edward J. Davila
 United States District Judge
 Northern District of California

1 Dated: August 22, 2022

2 By: /s/ Abby L. Dennis

3 Abby L. Dennis
4 Peggy Bayer Femenella
5 Joshua Goodman
6 Jeanine Balbach
7 Michael Barnett
8 E. Eric Elmore
9 Justin Epner
10 Sean D. Hughto
11 Frances Anne Johnson
12 Andrew Lowdon
13 Lincoln Mayer
14 Kristian Rogers
15 Anthony R. Saunders
16 Timothy Singer

17 Federal Trade Commission
18 600 Pennsylvania Avenue, NW
19 Washington, DC 20580
20 Tel: (202) 326-2381

21 Erika Wodinsky
22 90 7th Street, Suite 14-300
23 San Francisco, CA 94103
24 Tel: (415) 848-5190

25 Attorneys for Plaintiff Federal Trade
26 Commission

By: /s/ Bambo Obaro

Bambo Obaro, CA Bar No. 267683
bambo.obaro@weil.com
WEIL, GOTSHAL & MANGES LLP
201 Redwood Shores Parkway, 6th Floor
Redwood Shores, CA 94065-1134
Telephone: (650) 802-3000

Chantale Fiebig, DC Bar No. 487671
chantale.fiebig@weil.com
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW, Suite 600
Washington, DC 20036
Telephone: (202) 682-7200

Eric S. Hochstadt, NY Bar No. 4222683
eric.hochstadt@weil.com
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
Telephone: (212) 310-8538

Mark C. Hansen, DC Bar No. 425930
mhansen@kelloggghansen.com
KELLOGG HANSEN TODD
FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900

Counsel for Defendant Meta Platforms, Inc.
By: /s/ Christopher J. Cox
Christopher J. Cox, CA Bar No. 151650
chris.cox@hoganlovells.com
Hogan Lovells US LLP
4085 Campbell Avenue
Suite 100
Menlo Park, CA 94025
Telephone: (650) 463-4000

Logan M. Breed, DC Bar No. 479628
Charles A. Loughlin, DC Bar No. 448219
Lauren Battaglia, DC Bar No. 1007093

1 logan.breed@hoganlovells.com
2 chuck.loughlin@hoganlovells.com
3 lauren.battaglia@hoganlovells.com
4 (202) 637-6407
5 (202) 637-5661
6 (202) 637-5761
7 Hogan Lovells US LLP
8 555 13th St. NW
9 Washington, DC 20004
10 Counsel for Defendant Within Unlimited, Inc.

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FILER'S ATTESTATION

I, Abby L. Dennis, am the ECF User whose ID and password are being used to file this [PROPOSED] JOINT STIPULATED DISCOVERY PLAN AND BRIEFING SCHEDULE. In compliance with Civil Local Rule 5-1(h), I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories.

By: /s/ Abby L. Dennis

Abby L. Dennis