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8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 IN RE: SOCIAL MEDIA ADOLESCENT
11 ADDICTION/PERSONAL INJURY PRODUCTS
12 LIABILITY LITIGATION

13 This Document Relates To:
14 ALL ACTIONS
15
16
17

MDL No. 3047

Case No. 4:22-md-03047-YGR (PHK)

**AGENDA AND JOINT STATEMENT
FOR NOVEMBER 22, 2024, CASE
MANAGEMENT CONFERENCE**

Judge: Hon. Yvonne Gonzalez Rogers

Magistrate Judge: Hon. Peter H. Kang

1 Pursuant to Case Management Order (“CMO”) No. 1 (ECF 75), the Parties submit this agenda
2 and joint statement in advance of the November 22, 2024 Case Management Conference (“CMC”).

3 **I. Agenda for Case Management Conference**

4 Pursuant to Case Management Order No. 18, the Parties offer the below agenda for the CMC
5 scheduled for November 22, 2024:

- 6 • All Parties: So-ordering expert report certification language (*see infra* Section II)
- 7 • State AGs: State AG coalition leadership changes in Colorado
- 8 • PI/SD Plaintiffs: Plaintiffs’ request to narrow the pools of Personal Injury (“PI”) and School
9 District (“SD”) bellwethers ahead of expert report submissions (*see infra* Section II)
- 10 • State AGs: Court’s orders regarding state agencies who were served Rule 45 subpoenas (*see*
11 *infra* Section V(B))
- 12 • Montana AG and Meta: Procedure for addressing Montana AG Complaint in light of Court’s
13 Order granting in part and denying in part Meta’s motion to dismiss the Multistate AG
14 Complaint (ECF 1214) and Florida AG Complaint (ECF 1319). *See* ECF 1298 (Montana
15 AG’s position statement); ECF 1301 (Meta’s position statement).
- 16 • PI/SD Plaintiffs, State AGs, and Meta: Meta’s Notice of Appeal of Motion to Dismiss Orders
17 at ECF 1214 and 1267 (*see* ECF 1330)

18 **II. Joint Updates**

19 Expert Certification. The Parties have agreed to the following certification language to be included
20 in each expert report served in this case: “The undersigned hereby certifies their understanding that they
21 owe a primary and overriding duty of candor and professional integrity to help the Court on matters within
22 their expertise and in all submissions to, or testimony before, the Court. The undersigned further certifies
23 that their report and opinions are not being presented for any improper purpose, such as to harass, cause
24 unnecessary delay, or needlessly increase the cost of litigation.” The Parties request that, at the CMC, the
25 Court so-order inclusion of this certification language in expert reports.

26 Proposed Order re Stay of Claims Against Roblox and Discord. The PI Plaintiffs and Defendants
27 refer the Court to ECF 1331 and request entry of the proposed order.

1 Website. In CMO 18, the Court observed that there is “currently no centralized party-run
2 website” and requested that the “parties discuss whether the current approach is the best way to keep the
3 public abreast of this MDL’s developments.” PI/SD Plaintiffs and Defendants have conferred and report
4 that liaison counsel will work with BrownGreer to update and help it maintain its website about MDL
5 3047 with key dates and docket entries, located here:

6 <https://www.mdlcentrality.com/SocialMedia/IndexMDL>. PI/SD Plaintiffs and Defendants hope this
7 website will be complementary to the already-robust website maintained by the Court. Should the Court
8 wish, a link to this website could be added to the Court’s page about the litigation to facilitate public
9 access.

10 Vendor Obligations. In CMO 18, the Court ordered the Parties to “confirm, consistent with this
11 Court’s practice in class action cases, that their vendors will delete data subsequent to this MDL’s
12 closure and ensure that at any time these vendors have not, are not, and will not use data disclosed to
13 them for any other purpose beyond what is authorized pursuant to this litigation.” The Parties have
14 reached out to each of their vendors reminding them of these obligations. Each vendor has responded
15 confirming they understand and will abide by these obligations. During the last CMC, the Court also
16 asked Plaintiffs to ensure that there are no “behind the scenes [issues] that should raise concerns” with
17 their vendors, including potential conflicts of interest. 10/25/24 CMC Tr. 192:24-193:8. Plaintiffs’
18 leadership has reviewed their vendor list, made appropriate inquiries, and can confirm that, having
19 conducted this additional diligence, they remain unaware of any such issues.

20 Potential Narrowing of Bellwether Discovery Pools Before Expert Disclosures. As previewed
21 during the October 25, 2024 CMC (*see* Hr’g Tr. 29:7-32:11), the Parties have met and conferred
22 regarding PI/SD Plaintiffs’ proposal for a selection process and timing to further narrow the PI and SD
23 bellwether discovery pools before Plaintiffs’ expert reports are due. The Parties’ discussions are ongoing
24 and they will report the outcome in the next CMC statement.

25 TikTok Defendants’ Administrative Motion re California Attorney General Action. On
26 November 13, 2024, Defendants TikTok Inc., TikTok LLC, TikTok Ltd., ByteDance Inc., and
27 ByteDance Ltd. (“TikTok Defendants”) and the additional entities TikTok U.S. Data Security Inc. and
28 TikTok Pte. Ltd removed *The People of the State of California v. TikTok Inc.*, Case No. 5:24-cv-7942

1 (the “California Attorney General Action”) from the Superior Court of California, County of Santa Clara
2 to the Northern District of California. On November 14, the TikTok Defendants submitted an
3 Administrative Motion pursuant to Civil Local Rule 3-12 to request that the Court consider whether the
4 California Attorney General Action should be related to this MDL. The case is presently assigned to
5 Judge Eumi K. Lee. Any response to the TikTok Defendants’ motion must be filed by November 18.

6 **III. Joint JCCP Update**

7 Pursuant to CMO 18, the Parties offer the following update on proceedings in the JCCP. On
8 November 14, 2024, Judge Kuhl held a status conference to continue discussions regarding the status of
9 bellwether-specific discovery and expert discovery schedule in the JCCP. The next Status Conference
10 before Judge Kuhl will occur on December 9, 2024.

11 At the November conference, the Parties presented their proposed schedules for JCCP expert
12 discovery and *Sargon* motions. After oral argument, Judge Kuhl took the issue of the expert schedules
13 under submission.

14 The substantial completion deadline for bellwether-specific discovery was October 28, 2024. At
15 the November 14 conference, the Parties presented their positions on each other’s substantial completion
16 status for Judge Kuhl to consider. Judge Kuhl ordered each party to submit a report on November 19,
17 2024 outlining the outstanding productions related to the bellwether plaintiffs and deadlines for the
18 completion of discovery.

19 JCCP bellwether depositions commence on December 3, 2024. The parties have cooperatively
20 scheduled 56 depositions to take place between December 2024 and January 2025. Depositions of
21 treaters continue to be scheduled.

22 Judge Kuhl further ruled that Defendants must provide Plaintiffs advance notice, at a general
23 level and to the extent anticipated in advance, as to any depositions in which they believe questioning on
24 any Plaintiffs’ sexual behavior, criminal history, or drug use will be necessary because it relates to the
25 injuries or claims in the case. The parties are to meet and confer where necessary, and though
26 Defendants are not required to disclose specific questions they may ask, if Plaintiffs believe questioning
27 on these topics is improper, they may seek an order from the Court either prior to the deposition at issue
28 if the topic was disclosed in advance or during the deposition if the topic was not disclosed in advance.

1 Pursuant to a prior ruling, the parties exchanged draft jury instructions on causation. The parties
2 will file simultaneous briefs regarding the instructions on November 22, 2024 and the Court will hear
3 oral argument on December 17, 2024.

4 **IV. Joint Discovery Update**

5 A copy of the Parties' joint Discovery Management Conference ("DMC") Statement for the
6 November 23, 2024 DMC will be sent by email to Judge Gonzalez Rogers after it is filed.

7 **V. Plaintiffs' Additional Submission**

8 **A. PISD Ombudsperson**

9 In CMO 18, the Court requested that plaintiffs' leadership consider whether it would be useful to
10 designate one plaintiff's counsel among leadership "who could serve as the point-person to receive any
11 complaints from and among plaintiffs' counsel." Leadership is considering this suggestion and, per the
12 Court's order, will "advise the Court of plaintiffs' perspective in advance of this year's reappointment
13 requests."

14 **B. Court's Orders Regarding State Agencies Who Were Served Rule 45 Subpoenas**

15 *State AGs' Position:*

16 The State AGs seek clarification regarding the interplay of this Court's October 30 Order
17 reinstating Rule 45 subpoenas (ECF 1292) and Magistrate Judge Kang's subsequent Discovery
18 Management Order regarding search terms, custodians, and litigation holds (ECF 1299). Contrary to
19 Meta's suggestions, the State AGs do not dispute that Magistrate Judge Kang has ordered that a set of
20 state agencies are subject to party discovery (ECF 1117). Because the State AGs' request for
21 clarification is narrow and does not seek to relitigate that issue, the State AGs refrain from belaboring
22 the procedural history and arguments already set forth in the pending Motion for Relief from that order
23 (ECF 1168).

24 Following the Case Management Conference on October 25, 2024, this Court entered an Order
25 (ECF 1292) reinstating the Rule 45 subpoenas Meta issued to certain state agencies and directing Meta
26 and the AGs to "immediately resume and continue document productions" based on those Rule 45
27 subpoenas. The Court clarified that "to the extent Rule 45 subpoenas were not issued, the parties shall
28

1 comply with Magistrate Judge Kang’s orders regarding timing and procedures to complete this
2 discovery, including finalizing relevant custodians, search terms, and the scope of relevant documents.”

3 Two days later, Magistrate Judge Kang also entered Discovery Management Order 11, which
4 more generally orders various State AGs to identify search terms and custodians for their state agencies
5 and engage in meet and confers with Meta about the same, and orders the remaining State AGs who had
6 already been conferring with Meta regarding search terms and custodians to continue to do so (ECF
7 1299). The State AGs and Meta have conferred about the interplay of these orders on multiple occasions
8 and have different interpretations regarding the obligations these Orders, when read together, impose on
9 the state agencies who have received Rule 45 subpoenas from Meta. Meta insists that, despite this
10 Court’s Order, the State AGs are still required to engage in search term and custodian negotiations
11 pursuant to Magistrate Judge Kang’s subsequent order for agencies who received Rule 45 subpoenas,
12 essentially starting from scratch and duplicating those agencies’ efforts to identify and produce
13 responsive documents. The State AGs disagree; Meta’s position essentially renders this Court’s October
14 30 Order meaningless. Rather than expedite production from the state agencies who have already begun
15 production efforts under Rule 45, Meta’s suggestion that Rule 45 efforts and RFP negotiations under
16 party discovery parameters would proceed in parallel would introduce unnecessary delay and
17 duplication. While Meta is correct that some State AGs and agencies have proposed search terms and
18 custodians for agencies who have received Rule 45 subpoenas, those proposals have been made with all
19 reservations of rights regarding the effect of this Court’s October 30 Order. Moreover, Meta’s position
20 in negotiations with the State AGs regarding search terms and custodians has been largely intractable:
21 contrary to Meta’s representations that it is working collaboratively with the State AGs to identify
22 methods by which discovery of state agencies can be narrowly tailored, the State AGs’ suggestions,
23 including “go get ‘em” requests, tailored searches and/or custodians that account for agencies’ efforts to
24 date in response to Rule 45 subpoenas, identifying categories of documents unlikely to yield relevant
25 information, and de-prioritizing agencies that are unlikely to possess responsive material, have been
26 largely met with Meta’s refusal to consider such options and insistence on implementation of a
27 boilerplate list of broad search terms and threats that failure to acquiesce to Meta’s demands will lead to
28 immediate briefing before the Magistrate Judge. Meta’s position is at odds with this Court’s clear

1 directive to move forward with search terms and custodians “to the extent Rule 45 subpoenas *were not*
2 *issued*” and instruction to Meta to “not unilaterally cease ongoing negotiations with agencies during the
3 pendency of this Court’s review.” (Emphasis added.)

4 To facilitate efficient and expeditious progress on this issue, the State AGs seek clarification
5 from this Court regarding its Order and whether production according with Meta’s Rule 45 subpoenas is
6 intended to take place in lieu of producing in response to Meta’s requests for production under Rule 34
7 for the agencies in receipt of such a Rule 45 subpoena.

8 *Meta’s Position:*

9 The Court’s orders are clear, and the States AGs are creating inefficiencies and additional
10 burdens by suggesting otherwise. Pursuant to Judge Kang’s orders, most States have agreed to utilize
11 search terms and custodians for many of their agencies (including at least some of their subpoenaed
12 agencies), and Meta already is conferring with States about how to expedite productions, including
13 through “go get ‘em” requests, tailored searches and/or custodians that account for any efforts the
14 agency already has undertaken to locate potentially responsive material, identifying categories of
15 documents that would not need to be searched, and de-prioritizing agencies that are unlikely to possess
16 responsive material, and the like. Under the guise of seeking to clarify an order that is clear, the States
17 seek to disrupt this process, and partially abrogate Judge Kang’s well-reasoned, 248-page order largely
18 permitting Meta to seek party discovery of state agency files, so that discovery against agencies that
19 Meta subpoenaed would have to proceed alternatively on a separate track rather than in parallel with
20 other agency discovery. This Court’s October 30 order explicitly states that Judge Kang’s order “is not
21 stayed” while the Court considers the States’ objections. ECF No. 1292. The States should not be able
22 to supplant Judge Kang’s order through a purported need for “clarification.”

23 As background, Meta originally sought state agency discovery from the States in February 2024,
24 and when the State refused, promptly moved to compel. During the pendency of that motion, at Judge
25 Kang’s suggestion and to keep discovery moving forward, Meta began subpoenaing state agencies
26 common across states (e.g., Departments of Education and Health), without waiving any rights to seek
27 such discovery from the States should Judge Kang grant Meta’s motion to compel. While that subpoena
28 process was still in its nascent stages—fewer than half contacted Meta about the subpoenas, many

1 simply to request deadline extensions—and notwithstanding the States’ claims that the subpoenas
2 rendered Meta’s motion to compel moot, on September 6, 2024, Judge Kang largely granted Meta’s
3 motion “to compel the State Plaintiffs to include their identified state agencies within the scope of party
4 discovery” under FRCP 34. ECF No. 1117 at 2.

5 In his September 6, 2024 order, Judge Kang also expressed views on the inefficiencies inherent
6 in a process that would require Meta to subpoena the at-issue state agencies. According to Judge Kang,
7 “requiring a party (like . . . Meta here) to serve subpoenas on different state agencies who could then
8 assert different (even contradictory) arguments against the subpoenas, where there is a demonstrable and
9 legal basis for finding control, is not conducive to the just and efficient administration of justice.” ECF
10 No. 1117 at 41. Judge Kang has since repeatedly confirmed that all state agency discovery, including of
11 subpoenaed agencies, should be coordinated with the State AG. See, e.g., ECF No. 1299 (directing the
12 parties to “cooperate and coordinate” conferral scheduling “instead of requiring Meta to schedule and
13 conduct hundreds of separate meet and confers across all of the agencies.”). This Court has as well. See
14 ECF No. 1292 (“The AGs shall facilitate productions for and negotiations on behalf of the agencies in
15 their respective states”).

16 The States now seek “clarification” about whether anything in this Court’s October 30, 2024
17 order was “intended to take place in lieu of producing in response to Meta’s requests for production
18 under Rule 34 for the agencies in receipt of such a Rule 45 subpoena.” No clarification is needed. The
19 third sentence of this Court’s order expressly states that Judge Kang’s September 6 order permitting
20 state agency discovery via Rule 34 “(Dkt. No. 1117) is not stayed” while this Court considers the States’
21 objections. ECF No. 1292 (emphasis added). That means Meta should be able to continue to proceed
22 with state agency discovery through Rule 34 for all covered agencies.

23 To be clear, Meta gives the portion of this Court’s October 30, 2024 order concerning Rule 45
24 subpoenas meaning: that Meta is pursuing Rule 34 discovery against the agencies, to “expedite
25 productions,” agencies who also received a subpoena should “continue document productions based on
26 the contents and responses to those Rule 45 subpoenas.” ECF No. 1292. But there is nothing in this
27 Court’s order, or Judge Kang’s subsequently-issued order concerning how agency discovery should
28 proceed (ECF No. 1299), indicating that the Rule 45 subpoenas should displace—rather than operate in

1 parallel with—the party discovery process against those same agencies, including Meta’s ongoing
2 discussions with those agencies about appropriate search terms and custodians.

3 The States argue that Meta’s view means that the subpoenaed agencies would be “starting from
4 scratch” and have to “duplicat[e]” prior efforts. Not true. First, most of the subpoenaed agencies would
5 be “starting from scratch” or nearly from scratch either way. Prior to October 30, 2024, less than one-
6 third of the subpoenaed agencies had produced anything to Meta. Of those agency productions, more
7 than one-quarter contained fewer than 10 documents. And for about 15 States, Meta received no
8 documents from any subpoenaed agency. Second, in conferrals concerning the handful of subpoenaed
9 agencies who produced documents, Meta has routinely asked for information about those agencies’
10 search processes to assess tailoring any additional searches to avoid unnecessary duplication, and
11 discussed other ways of streamlining discovery, including the use of “go get ‘em” requests.

12 In addition to being contrary to this Court’s express statement that Judge Kang’s order on agency
13 discovery “is not stayed,” the States’ view accomplishes little but create inefficiencies. The vast
14 majority of States already have committed to utilizing search terms and custodians for some or all of the
15 agencies that Meta subpoenaed, and are having ongoing conferrals with Meta about the parameters of
16 those searches. Of the remaining minority of States who have taken the position that they should be
17 excused from proposing search terms and custodians for subpoenaed agencies in light of this Court’s
18 October 30, 2024 order, all but three were expressly directed by Judge Kang’s October 29 and
19 November 1 orders to propose terms and custodians by November 1 (ECF Nos. 1291, 1299), and yet did
20 not comply with that Court order. Changing the process that most States have agreed to undertake to
21 implement Judge Kang’s September 6 order would only add more hurdles to an “[e]fficient resolution of
22 the issues.” ECF No. 1292.

1 Respectfully submitted,

2 DATED: November 15, 2024

By: /s/ Previn Warren

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ATTESTATION

I, Megan O’Neill, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

Dated: November 15, 2024

By: /s/ Megan O’Neill