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

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

In the Matter of

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

Docket No. C-4365

**COMPLAINT COUNSEL’S MOTION FOR ORDER REQUIRING PARTIES TO MEET-
AND-CONFER AND SUBMIT JOINT PROPOSED SCHEDULING ORDER**

Complaint Counsel respectfully requests the Commission issue the attached proposed order allowing the parties to meet and confer and submit proposed scheduling orders. The Commission has wide discretion to set procedures governing order modification proceedings. The first question in determining an appropriate procedure is to determine the extent of the parties’ factual dispute. The Commission’s Show Cause Order and the Respondent’s reply contain hundreds of pages of factual allegations, many of which are not inconsistent with each other. Allowing the parties time to sort through these materials will aid the Commission in determining the appropriate procedure going forward. The parties conferred on April 4, 2024, and April 9, 2024, regarding the substance of this motion. Counsel for Respondent informed Complaint Counsel that Respondent does not consent to the relief sought and intends to oppose the motion.

On April 1, 2024, Respondent Meta Platforms, Inc. (“Meta”) filed a timely Response to

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the Commission's May 3, 2023, Order to Show Cause.¹ Commission Rule 3.72(b)(2) provides the Commission authority to set procedures for this proceeding as appropriate. If the Commission finds the pleadings do not raise "substantial factual issues" requiring resolution, for instance, the Commission may decide the matter on the pleadings or after a hearing limited to the parties' briefs and optional oral arguments. If the Commission finds the pleadings raise factual issues, the Commission may hold an evidentiary hearing "as it deems appropriate." Specifically, the Commission may decide to conduct the hearing itself or order the hearing be held before an Administrative Law Judge (ALJ). If the hearing proceeds before an ALJ, the Rule defaults to the Rules of Practice for Adjudicative Proceedings "insofar as practicable." However, the Commission may "otherwise order[]" an entirely different set of procedures. In short, while the Rule specifies some decision points, the choice of procedures ultimately lies within the Commission's discretion.

To establish an efficient path forward, the parties require additional time to evaluate how best to address the voluminous factual record and, where possible, narrow the issues for resolution. The Preliminary Findings of Fact in support of the May 3, 2023, OSC comprised 1,164 separate findings and more than 100 exhibits. On April 1, 2024, Meta submitted a 179-page brief in response, along with a 668-page detailed response to the Preliminary Findings of Fact, three expert reports, and hundreds of pages of additional exhibits.

In its response, Meta asserts there may be hundreds of individual and substantial factual issues for resolution. However, Complaint Counsel's preliminary review of Meta's filings indicates many facts may not actually be in dispute – which would obviate the need for the Commission to undertake extensive fact-finding discovery proceedings or conduct a full

¹ Following the Commission's issuance of the Order to Show Cause, the original June 2, 2023, deadline for Meta's response was extended several times to April 1, 2024.

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evidentiary hearing. It would be extremely difficult, if not impossible, at this juncture to determine precisely what procedures are appropriate without first knowing whether and to what extent any material issues of fact exist. If given sufficient time to evaluate, the parties may ultimately stipulate to most facts on the record, while disagreeing as to the legal significance of such facts as they concern the proposed order modification. Indeed, in its recent pleadings, Meta advanced a number of legal arguments that Complaint Counsel will need time to consider in light of the expanded record, so that the parties may be best-positioned to present for the Commission the remaining issues to be decided.

Accordingly, in the interest of facilitating an efficient and orderly proceeding, Complaint Counsel submits the attached proposed order. The proposed order requires the parties to work together in recommending procedures appropriate for the factual and legal issues raised by the voluminous pleadings. Specifically, the proposed order provides a 90-day meet-and-confer period for the parties to review the filings, negotiate appropriate stipulations, and narrow the factual disputes for resolution. After the meet-and-confer period, the proposed order requires the parties to jointly recommend whether the Commission should hold an evidentiary hearing and, if so, whether the Commission or an ALJ should preside over the hearing, given the nature and complexity of the remaining factual disputes. Finally, the proposed order requires the parties to jointly submit a pre-hearing schedule that provides discovery for any factual issues the Commission finds requiring further development and sufficient time for the parties to review, narrow, and brief the legal issues raised in Meta's 179-page brief filed as part of its Response. In the event the parties cannot reach an agreement, the proposed order requires each party to separately submit a proposed scheduling order and supporting brief for the Commission's consideration.

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**[PROPOSED] ORDER REQUIRING PARTIES TO MEET AND CONFER AND SUBMIT
JOINT PROPOSED SCHEDULING ORDER**

On May 3, 2023, the Commission entered an Order to Show Cause (“OSC”) Why the Commission Should Not Modify the April 27, 2020, Order in the above-referenced matter. On April 1, 2024, Respondent filed a timely Response to the Commission’s OSC. The parties’ pleadings contain well over a thousand pages alleging thousands of facts. At this juncture, Commission Rule 3.72(b)(2) provides the Commission authority to flexibly set appropriate procedures for this proceeding. To facilitate the Commission’s setting of those procedures,

IT IS HEREBY ORDERED THAT, within 90 days of this Order, Complaint Counsel and Respondent shall meet and confer, identify any factual disputes requiring resolution, and submit a joint proposed scheduling order. The joint proposed scheduling order shall set forth whether an evidentiary hearing is necessary; whether the Commission or an Administrative Law Judge should preside over such hearing; any factual issues requiring further discovery and a discovery schedule; a briefing schedule to develop the issues raised in the parties’ pleadings; and any other matter as may be appropriate. In the event the parties cannot reach an agreement on a joint proposed scheduling order, each party shall separately submit a proposed scheduling order and a memorandum explaining the schedule proposed therein.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED:

