

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

FILED 1st JUDICIAL DISTRICT COURT
Santa Fe County
8/20/2026 3:56 PM
KATHLEEN VIGIL CLERK OF THE COURT
Dominique Z Garcia

STATE OF NEW MEXICO, *ex rel.*
RAÚL TORREZ, Attorney General,

Plaintiff,

v.

No. D-101-CV-2021-00132

FACEBOOK, INC.,

Defendant.

PRE-TRIAL ORDER

This matter having come before the Court on August 14, 2026, at a pretrial conference held before Hon. Francis J. Mathew, District Judge, Division I, under Rule 1-016(E) NMRA of the Rules of Civil Procedure for the District Courts, and counsel having appeared for both the Plaintiff and the Defendant; the following action was taken.

1. JURISDICTION

Plaintiff maintains that the Court has jurisdiction of the Parties and subject matter.

Defendant maintains that Plaintiff has not established that New Mexico courts can exercise personal jurisdiction over Defendant in this matter.

2. PARTIES

The Plaintiff in this action is the State of New Mexico ("Plaintiff" or "the State").

The Defendant in this action is Facebook, Inc. ("Defendant" or "Facebook").

3. GENERAL NATURE OF THE CLAIMS OF THE PARTIES:

A. Plaintiff's Claims

1. Plaintiff's Description of Claims

The State contends that Facebook willfully engaged in unfair, deceptive, and

unconscionable acts and business practices under the New Mexico Unfair Practices Act, §57-12-1 *et seq.*, NMSA 1978. Plaintiff's Trial Exhibits 6, 84, 132, 200, and 272 identify the specific affirmative representations the State intends to prove false or misleading at trial.¹ The State does not contend that any affirmative representation outside of these exhibits is an independent false or misleading statement for purposes of liability, but the State may rely on disclosed evidence of Facebook's conduct, practices, circumstances, knowledge, and material omissions to prove why those representations were false or misleading, material, willful, and actionable, and to prove the alleged unfair, deceptive, or unconscionable acts and practices alleged.

The State's unfair-or-deceptive-trade-practice claims concern the following five disclosed categories of actionable unfair or deceptive acts and practices. The representations contained in PI's Exs. 6, 84, 132, 200, and 272 are specific affirmative representations within, and evidence of, the broader disclosed categories of unfair or deceptive conduct, including associated material omissions and underlying practices that allegedly made those representations false or misleading.

1. **User control over personal information.** Facebook misrepresented that users controlled their personal information and that Facebook would not share, disclose, or sell that information to third parties without users' permission.
2. **Hateful, violent, and divisive content.** Facebook misrepresented that it maintained a zero-tolerance policy for hateful, violent, and divisive content and removed content that violated its policies.
3. **Misinformation.** Facebook misrepresented that it detected, labeled, demoted, or removed misinformation from its platform.
4. **Equal application of Facebook's policies.** Facebook misrepresented that its policies applied equally to all users and that no person or entity was exempt from those policies or their enforcement.
5. **Misrepresentations regarding data misuse and Facebook friends' data.** Facebook made misrepresentations regarding its efforts to address prior and future abuse or

¹ The State has further narrowed the statements from the selection included in Appendix A to the State's Sixth Amended Responses to Facebook's First Set of Interrogatories to the 46 statements identified in the identified Plaintiff's Trial Exhibits.

misuse of data and bad actors on the Facebook Platform, including following the Cambridge Analytica disclosures:

- a. Facebook misrepresented that it would investigate third party applications that had access to large amounts of user data before Facebook changed its Platform in 2014, fully audit applications with suspicious activity, ban applications or developers that misused data or refused an audit, ensure the deletion of misused data, and notify affected users; and
- b. Facebook misrepresented, beginning in 2014 and reiterated in 2018 following the Cambridge Analytica disclosures, that changes to its Graph API prevented apps on the Platform from accessing Friends Data. Facebook represented that the prior “friends-of-friends” access model had been shut down and that apps could no longer access a user’s friends’ information unless those friends had also authorized the app.

The State further alleges five unconscionable practices generally corresponding to the same five subject areas described above. The State contends that Facebook’s acts and practices, considered together and in light of Facebook’s substantial advantages over New Mexico consumers, took advantage of New Mexico citizens’ lack of knowledge, ability, experience, or capacity to a grossly unfair degree and to their detriment. Those disadvantages and vulnerabilities included: technological asymmetry; knowledge and informational asymmetry; psychological, social, and cognitive vulnerability; consumers’ inability to understand or control how Facebook’s systems shaped their experience, and market vulnerability arising from Facebook’s market power and the resulting limits on consumer choice.

Additional detail as to these claims may be found in the Complaint and the State’s discovery responses.

Facebook’s objections to the State’s description of its claims (*see infra*) substantially reprise the same notice, due process, and case narrowing arguments it raised in its Motion *in Limine* No. 1 and Renewed Motion *in Limine* No. 1, both of which the Court denied. Order Den. Facebook’s Mot. *in Lim.* No. 1 (Feb. 12, 2026); Order Den. Facebook’s Renewed Mot. *in Lim.* No.

1 on Unconscionable Practices (July 17, 2026). Facebook is now seeking, improperly through its objections to the Pretrial Order, the same claim-narrowing relief the Court previously rejected.

B. Defendant's Defenses

Facebook objects to the State's above description of its claims on due process grounds because the State's vague description deprives Facebook of fair notice of the claims it must defend against at trial.

Facebook denies the State's claims and maintains that the State cannot sustain its burden of proving that Facebook committed any violation of the Unfair Practices Act. In particular, the State cannot sustain its burden of proving that Facebook engaged in an "unfair or deceptive trade practice" or its burden of proving that Facebook committed an "unconscionable trade practice" as those terms are defined in the UPA. Nor can the State meet its burden to establish that it is entitled to any civil penalties or injunctive relief.

Facebook further asserts the following affirmative defenses:

1. The State's claims fail, in whole or in part, because they violate Facebook's speech rights under the First Amendment to the United States Constitution and Article II, Section 17 of the New Mexico Constitution and are barred by Section 230 of the federal Communications Decency Act.
2. The State's claims fail, in whole or in part, because Facebook is immune from litigation related to—and cannot be held liable for—alleged Facebook content created and/or disseminated by third-party users under Section 57-12-16 of the UPA, which creates an exemption for publishers of third-party content.

3. The State's claims fail, in whole or in part, to the extent they violate the Due Process Clauses of the Fourteenth Amendment to the United States Constitution and Article II, Section 18 of the New Mexico Constitution.
4. The State's claims fail, in whole or in part, under the applicable statute of limitations and the doctrine of laches.
5. The State's claims fail, in whole or in part, because the Federal Trade Commission has primary jurisdiction.
6. Facebook incorporates by reference the additional defenses set forth in Facebook's First Amended Answer.

4. UNCONTROVERTED FACTS

The following facts are established by admissions in the pleadings or by stipulations of counsel:

- a. Defendant Facebook, Inc., operates the Facebook platform.
- b. The Facebook platform had 1,317,052,878 monthly active users (MAU) globally in 2014, 1,712,711,484 in 2016, 2,233,725,116 in 2018, and 2,700,805,770 in 2020.²
- c. The Facebook platform had 1,024,516 monthly active users (MAU) located in New Mexico in 2014, 1,162,788 in 2016, 1,257,295 in 2018, and 1,386,648 in 2020.³
- d. Businesses, including businesses in New Mexico, advertise on the Facebook platform.

² The measurement date is a point-in-time (June 30, 2014; June 30, 2016; June 30, 2018; and June 30, 2020, respectively). A MAU is a registered and logged-in Facebook user who visited the Facebook platform through a website or a mobile device, or used the Messenger application (and is also a registered Facebook user), in the last 30 days as of the date of measurement.

³ "Located in New Mexico" means "having a predicted location of New Mexico as reflected in the data Facebook maintains in the ordinary course of business," reflecting the user's predicted location as of the measurement date. The measurement date is a point-in-time (June 30, 2014; June 30, 2016; June 30, 2018; and June 30, 2020, respectively).

- e. Facebook has received advertising revenue from businesses in New Mexico that advertise on the Facebook platform.

5. CONTESTED ISSUES OF FACT

The parties jointly agree on the following contested issues of fact remaining for decision, subject to the Court's rulings on the disputed legal issues identified in Section 6:

- a. The factual findings, if any, necessary to determine the number of violations of the UPA under the legal methodology determined by the Court.
- b. Whether any violation of the UPA found by the jury was willfully committed.
- c. The factual findings, if any, necessary for the Court to determine the appropriate amount of statutory civil penalties following the jury's verdict.

Pursuant to a Stipulated Order for a 12-Person Jury, entered on August 21, 2025:

- "The parties agree to select a 12-person jury to hear and decide the factual issues in this case, including liability, unconscionability, willfulness, and the number of violations," if any.
- "The Court will decide the amount of any statutory penalty to be imposed," if any, "and the parties agree that neither party will request an advisory jury."

The Parties respectfully submit that, pursuant to the August 21, 2025 stipulation, the Court will determine the methodology for counting the number of willful violations, if any, and instruct the jury accordingly, and the jury will determine the number of violations, if any, under the methodology instructed by the Court. The Parties will meet and confer to set forth a proposed procedure for any further briefing or argument on the methodology for counting the number of willful violations, if any.

A. Plaintiff's List of Contested Issues of Fact

- a. Whether Facebook committed any unfair or deceptive trade practice alleged by the State.
 - b. Whether Facebook committed any unconscionable trade practice alleged by the State.
 - c. Whether Facebook willfully committed any act or practice that violated the UPA.
- B. Defendant's List of Contested Issues of Fact
- a. Whether Facebook violated the UPA with respect to any of the 46 statements identified in Plaintiff's Trial Exhibits 6, 84, 132, 200, and 272, which were identified in "Plaintiff's Trial Exhibits," filed June 1, 2026. These 46 statements are also included and identified in Appendix A to Plaintiff's Sixth Amended Responses and Objections to Defendant's First Set of Interrogatories to Plaintiff, dated February 27, 2026.
 - b. Whether Facebook violated the UPA with respect to one of the five categories of alleged unconscionable practices at issue, identified in Appendix A to the State's Sixth Amended Responses and Objections to Defendant's Interrogatories, and if so, with respect to which category.
 - c. All facts necessary to evaluate Facebook's affirmative defenses.

6. CONTESTED ISSUES OF LAW

The contested issues of law are those implicit in the foregoing issues of fact and those raised in the parties' respective motions for summary judgment and other pleadings, all of which the parties incorporate by reference here. Any additional issues of law that arise pretrial will be raised with the Court by appropriate motion.

7. EXHIBITS

A. Pretrial Exhibit Disclosures.

- (1) On June 1, 2026, the parties exchanged exhibit lists and copies of exhibits in accordance with the Court's November 10, 2025 order. The parties have subsequently exchanged and filed amended exhibit lists and copies of supplemental exhibits.

B. **Trial-Use Disclosures and Objections.** The disclosure of exhibits for admission into evidence at trial shall proceed as follows:

- (1) Except as otherwise specified below, the party calling a witness shall disclose the exhibits that the party intends to use on direct examination with that witness by 9 am MT at least two calendar days before the beginning of the trial day on which the direct examination will begin. For example, exhibits for use during a direct examination that begins on a Monday shall be disclosed by Saturday at 9 am MT; such exhibits for use during a direct examination that begins on a Tuesday shall be disclosed by Sunday at 9 am MT.
- (2) The opposing party shall disclose whether it intends to maintain any previously disclosed objections to such exhibits, and any redactions that have not been made to such exhibits, by 9 am MT at least one calendar day before the beginning of the trial day on which the witness's testimony is anticipated to begin. For example, any remaining objections or proposed redactions to exhibits for use during a direct examination that begins on Monday shall be disclosed by Sunday at 9 am MT; objections and proposed redactions to such exhibits for use during direct examination of a witness that begins on Tuesday shall be disclosed by Monday at 9 am MT.
- (3) All exhibits to be used on cross examination, and all exhibits solely for purposes of impeachment or refreshing recollection, do not need to be disclosed to the opposing party in advance of the witness's testimony.
- (4) With respect to any exhibits to be offered on direct examination pursuant to Rule 11-1006:

- a. A data-intensive or voluminous summary exhibit that is not included in an expert report, has been substantively modified from a version included in an expert report, or otherwise was not previously disclosed to the opposing party must be disclosed by 9 am MT seven calendar days before the start of the direct examination where the exhibit will be used. For example, such Rule 11-1006 exhibits intended for use during a direct examination of a witness starting on Monday shall be disclosed by 9 am MT on the preceding Monday.
 - b. A Rule 11-1006 exhibit that was included in an expert report or otherwise previously disclosed to the opposing party, and intended to be used without substantive modifications, must be disclosed by 9 am MT at least two calendar days before the beginning of the trial day on which the witness's direct examination will begin. For example, such Rule 11-1006 exhibits intended for use during a direct examination of a witness starting on Monday shall be disclosed by 9 am MT on Saturday.
 - c. At the time a Rule 11-1006 exhibit is disclosed, the offering party shall identify any documents forming the basis of the summary.
- (5) Any objections to exhibits will be presented to the Court no later than 12 pm MT the day before the anticipated use, if the Court has not previously ruled on the objection.

C. Advance Redactions.

- (1) By 5 pm MT on September 4, 2026, the proponent of the redactions shall provide the opposing party with any proposed redacted versions of listed trial

exhibits, identifying the basis for any redactions, including those based on the removal of (a) privilege-related markings, (b) personal identifying information of current or former employees that the parties agreed may be redacted; (c) highly confidential information the disclosure of which could enable third parties to exploit or circumvent a party's physical or electronic systems or security.

- (2) The opposing party shall identify any such objections to a proposed redaction within the earlier of (a) ten (10) days of receipt of the proposed redaction, or (b) by 9 am MT at least two calendar days before the start of the examination in which the trial exhibit is to be used, whichever is earlier. The parties shall confer in good faith regarding disputed redactions.
- (3) No disputed redaction shall be presented to the jury absent agreement of the parties or an order of the Court.
- (4) If a redaction is undisputed, agreed upon, or ordered by the Court, such redacted version shall be used for all purposes during trial, including for purposes of creating any demonstratives to be shown to the jury.

D. **Deposition Exhibits.** Admission of deposition exhibits and corresponding trial exhibits will proceed as follows:

- (1) To avoid admitting duplicative copies of the same document merely because the document was assigned different exhibit numbers in one or more depositions, the parties shall, where practicable, use a single trial exhibit for each document. The parties shall prepare a cross-reference identifying each deposition exhibit number and its corresponding trial exhibit number.

- (2) Before a videotaped deposition excerpt referring to a deposition exhibit is presented to the jury, the proponent shall identify the corresponding trial exhibit to opposing counsel and the Court. The parties shall meet and confer regarding an appropriate means of explaining the numbering distinction to the jury, which may include a preliminary instruction, a cross-reference key, a notation displayed with the deposition testimony, or a combination thereof.

E. Demonstratives; Opening and Closing Materials.

- (1) **Demonstratives:** Each side shall disclose pre-written or pre-created demonstratives by 9 am MT at least two calendar days before the beginning of the trial day they are used before the jury. For example, demonstratives for use on a Monday shall be disclosed on Saturday at 9 am MT. At the time the demonstrative is disclosed, the party shall also identify any trial exhibit or testimony that is included, excerpted, or quoted in the demonstrative. Any objections to such demonstratives shall be disclosed to the opposing party and presented to the Court no later than 12 pm MT on the calendar day before their anticipated use.

(2) **DISPUTED — Opening and Closing Materials:**

- a. State's Position: The State's position is that neither side should be required to disclose in advance any demonstratives prepared for, or trial exhibits to be used or displayed during, its Opening Statement or Closing Argument.
- b. Facebook's Position: Facebook's position is that each side shall disclose any demonstratives (including but not limited to PowerPoints, other slide presentations, and other audiovisual materials) to be used or shown to the jury

in its Opening Statement or Closing Argument, and any trial exhibit to be used or shown to the jury in its Opening Statement, by 9 am MT at least one calendar day before the beginning of the Opening Statement or Closing Argument. At the time a demonstrative is disclosed, the party shall also identify any trial exhibit or testimony that is included, excerpted, or quoted in the demonstrative (including, in the case of a PowerPoint or other slide presentation, the specific slide on which the trial exhibit or testimony is included, excerpted, or quoted). The parties jointly agreed to this advance disclosure in the draft pretrial order that was submitted to the Court on August 14, 2026, and Facebook believes that it is also consistent with the Court's instruction that the parties present objections to exhibits in advance of their use.

- c. No demonstrative or trial exhibit shall be used in Opening Statements or Closing Arguments unless such exhibit has been previously admitted into evidence or stipulated for publication by the opposing side.

8. DEPOSITION DESIGNATIONS

A. **Pretrial Designation Disclosures and Objections.** In accordance with the Court's November 10, 2025 order, the parties timely filed deposition designations, counter-designations, and objections, except for designations and objections relating to Mark Zuckerberg's July 14, 2026 deposition, which took place after the deadlines set in the November 10, 2025 order.

- (1) The parties identified initial designations from Mark Zuckerberg's July 14, 2026 deposition by August 12, 2026. The opposing party shall identify its counter-designations and objections by August 19, 2026. The offering party

shall identify its rebuttal designations and objections to the counter-designations by August 26, 2026.

- (2) No testimony subject to an unresolved objection may be played to the jury without leave of the Court.
- (3) No testimony may be played to the jury until the opposing party has been given an opportunity to review the final video cut to confirm that it conforms to the Court's rulings.

9. DISCOVERY

Discovery has been completed.

10. WITNESSES

- A. Plaintiff may call live the individuals identified on Plaintiff's Fourth Amended Non-Expert Witness List dated July 30, 2026, and the individuals identified on Plaintiff's Second Amended Expert Witness List dated August 6, 2026. Plaintiff's current non-expert witness list identifies only witnesses whom Plaintiff may call to testify live and does not include witnesses whose testimony Plaintiff may present solely through videotaped deposition testimony or deposition transcript designations.
- B. Defendant may call live the witnesses identified on its First Amended Fact Witness List dated August 7, 2026, and the individuals identified on its Expert Witness List dated May 28, 2025. Defendant's First Amended Fact Witness List identifies only fact witnesses whom Defendant may call to testify live and does not include expert witnesses or witnesses whose testimony Defendant may present solely through videotaped deposition testimony or deposition

transcript designations.

- C. The Court will permit Defendant to present a written proffer of the testimony of its two excluded expert witnesses in lieu of a live proffer.

D. Trial Witness Disclosures.

- (1) By 12 pm MT on Friday of each week, the parties shall disclose their anticipated witness order, including both live and deposition testimony, for the following week. Plaintiff's witnesses for the first week of trial shall be disclosed by 6 pm MT on Friday, September 4, 2026.
- (2) The party calling a witness shall disclose the specific day on which that witness's direct examination will begin by 9 am MT at least two calendar days before the beginning of that trial day, along with the approximate anticipated length of the witness's direct examination, except that for a witness who is anticipated to begin testimony on a Monday, this disclosure shall be made by 6 pm MT on the preceding Friday. For the State's first witness, this disclosure shall be made by 6 pm MT on Friday, September 4.

11. JURY INSTRUCTIONS

In accordance with the Court's Modified Rule 16(B) Scheduling Order (entered 9/24/2025), the parties will confer in a good faith attempt to agree on the form of jury instructions that are not reasonably in dispute.

12. AMENDMENTS TO PLEADINGS

There were no requests to amend pleadings.

13. OTHER MATTERS

Below are additional matters to aid in the disposition of the action:

A. If the jury determines that Defendant has committed a violation of the UPA, the parties shall propose and the Court shall decide upon a procedure for the Court to determine (1) pursuant to NMSA 1978, § 57-12-11, the appropriate civil penalty, if any, for any willful violations found by the jury; and/or (2) pursuant to NMSA 1978, § 57-12-8(B), any appropriate injunctive relief. At this time, the State anticipates that the requested injunctive relief would consist of a permanent injunction prohibiting Facebook from making false or misleading representations or material omissions on topics adjudicated at trial to be deceptive, or engaging in conduct adjudicated at trial to be unconscionable with respect to the State's data privacy claims. The parties reserve all rights and defenses with respect to any such future proceedings.

B. **Opening Statements:**

Each side shall have no more than ninety (90) minutes to present its opening statement.

14. MODIFICATIONS – INTERPRETATION

This pretrial order has been finalized after a pre-trial conference at which counsel for the respective parties have appeared. Reasonable opportunity has been afforded counsel for corrections or additions prior to signing by the Court. Hereafter, this order will control the course of the trial and may not be amended except by consent of the parties and the Court, or by order of the Court to prevent manifest injustice. The pleadings and motions filed in this matter will be deemed merged and incorporated herein. In the event of ambiguity in any provision of this order, reference may be made to the pleadings and motions.

15. TRIAL SETTING

The case is set for trial with jury selection commencing on September 8, 2026, by 9:00 am MT, and will conclude by October 2, 2026.

16. SETTLEMENT

The parties have had good faith discussions regarding a potential resolution, but the possibility of settlement remains uncertain at this time.

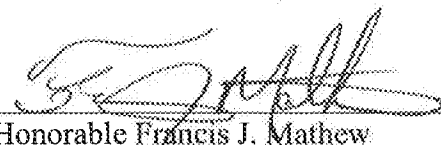
17. EXCEPTIONS

Plaintiff has no exceptions.

Defendant respectfully maintains its positions on all pretrial motions on which it has not prevailed and preserves for potential appeal its arguments in support thereof or in opposition thereto.

IT IS SO ORDERED.

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Dated


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Honorable Francis J. Mathew
District Judge

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