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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE META PIXEL HEALTHCARE
LITIGATION

Case No.: 3:22-cv-03580-WHO

CLASS ACTION

This Document Relates To: *Doe*, Case No.
3:22-cv-04393-WHO

**~~[PROPOSED]~~ ORDER GRANTING
UNOPPOSED JOINT MOTION TO
SEVER CLAIMS AGAINST UCSF
MEDICAL CENTER AND DIGNITY
HEALTH MEDICAL FOUNDATION
INTO SEPARATE ACTIONS**

DATE: December 21, 2022
TIME: 2:00 p.m.
CTRM: 2
JUDGE: Hon. William H. Orrick


BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

1 Before the Court is Plaintiff Jane Doe (“Plaintiff”) and Defendants The Regents of the
2 University of California (the real party in interest for “UCSF Medical Center”) (hereafter “UCSF”)
3 and Dignity Health Medical Foundation’s (“DHMF”) Unopposed Joint Motion to Sever Claims
4 Against UCSF and DHMF into Separate Actions (the “Unopposed Joint Motion”).

5 Having read and considered the Unopposed Joint Motion, the pleadings on file in this
6 matter, and good cause appearing for the relief requested in the Unopposed Joint Motion, the
7 Unopposed Joint Motion is hereby GRANTED. Plaintiff’s claims against UCSF shall be severed
8 from this action into a separate action. Plaintiff’s claims against DHMF shall also be severed from
9 this action into a different, separate action. Plaintiff shall have 45 days to file any amended
10 complaint in this Court against each of UCSF and DHMF, and UCSF and DHMF shall confer with
11 Plaintiff in their respective cases on any proposed briefing schedule regarding subsequent motions.

12
13 **IT IS SO ORDERED.**

14
15 Dated: November 21, 2022

16 
17 HONORABLE WILLIAM H. ORRICK
18 UNITED STATES DISTRICT JUDGE

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

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CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2022, I electronically transmitted the following document **[PROPOSED] ORDER GRANTING UNOPPOSED JOINT MOTION TO SEVER CLAIMS AGAINST UCSF MEDICAL CENTER AND DIGNITY HEALTH MEDICAL FOUNDATION INTO SEPARATE ACTIONS** to the Clerk’s Office using the CM/ECF System for filing and service via transmittal of a Notice of Electronic Filing on the following:

James M. Wagstaffe (95535)
Frank H. Busch (258288)
**WAGSTAFFE, VON LOEWENFELDT,
BUSCH & RADWICK LLP**
100 Pine Street, Suite 2250
San Francisco, CA 94111
Telephone: 415-357-8900
Facsimile: 415-357-8910
Emails: wagstaffe@wvbrlaw.com
busch@wvbrlaw.com

Attorneys for Plaintiff
JANE DOE, individually and on behalf
of all other persons similarly situated

Ashley Lynn Shively (264912)
Jacqueline Nicole Harvey (322165)
HOLLAND & KNIGHT LLP
50 California Street, Suite 2800
San Francisco, CA 94111
Telephone: 415-742-6970
Facsimile: 415-743-6910
Emails: ashley.shively@hklaw.com
jacqueline.harvey@hklaw.com

Attorneys for Defendant
DIGNITY HEALTH MEDICAL
FOUNDATION

Michael Graham Rhodes (116127)
Caroline Lebel (340067)
Kyle Christopher Wong (224021)
COOLEY LLP
3 Embarcadero Center, 20th Floor
San Francisco, CA 94111- 4004
Telephone: 415-693-2000
Facsimile: 415-693-2222
Emails: rhodesmg@cooley.com
clebel@cooley.com
kwong@cooley.com

Attorneys for Defendant
META PLATFORMS INC. (formerly
known as Facebook, Inc.)

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

1 Abigail Augus Barrera (301746)
2 **GIBSON, DUNN & CRUTCHER LLP**
3 555 Mission Street, Suite 3000
4 San Francisco, CA 94105
5 Telephone: 415-393-8200
6 Facsimile: 415-393-8306
7 Emails: abarrera@gibsondunn.com

8 I further certify that a copy of the foregoing document was mailed via U.S. Mail and
9 transmitted via e-mail to the person(s) listed below:

10 Christian Levis (admitted pro hac vice) *Attorneys for Plaintiff*
11 Amanda Grace Fiorilla (admitted pro hac vice) JANE DOE, individually and on behalf
12 Rachel Kesten (admitted pro hac vice) of all other persons similarly situated

13 **LOWEY DANNENBERG, P.C.**
14 44 South Broadway, Suite 1100
15 White Plains, NY 10601
16 Tel: (914) 997-0500
17 Facsimile: 914-997-0035
18 Emails: clevis@lowey.com
19 afiorilla@lowey.com
20 rkesten@lowey.com

21 Mark S Melodia (pro hac vice forthcoming) *Attorneys for Defendant*
22 **HOLLAND & KNIGHT LLP** DIGNITY HEALTH MEDICAL
23 31 West 52nd Street FOUNDATION
24 New York, NY 10019
25 Telephone: 212-513-3200
26 Email: Mark.Melodia@hklaw.com

27 Lauren R. Goldman (admitted pro hac vice) *Attorneys for Defendant*
28 **GIBSON, DUNN & CRUTCHER LLP** META PLATFORMS INC. (formerly
29 200 Park Avenue known as Facebook, Inc.)
30 New York, NY 10166-0193
31 Telephone: 212-351-4000
32 Email: lgoldman@gibsondunn.com

33 Trenton James Van Oss (admitted pro hac vice)
34 **GIBSON, DUNN & CRUTCHER LLP**
35 2543 13th St. NW #2
36 Washington, DC 200009
37 Telephone: 202-887-3716
38 Email: tvanoss@gibsondunn.com

1 TERESA C. CHOW (SBN 237694)
tchow@bakerlaw.com
2 ALEXANDER VITRUK (SBN 315756)
avitruk@bakerlaw.com
3 **BAKER & HOSTETLER LLP**
11601 Wilshire Boulevard, Suite 1400
4 Los Angeles, CA 90025-0509
Telephone: 310.820.8800
5 Facsimile: 310.820.8859

6 *Attorneys for Defendant*
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

7
8 [Signatures for Plaintiff’s counsel and Defendant
Dignity Health Medical Foundation’s counsel on subsequent pages]

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 IN RE META PIXEL HEALTHCARE
12 LITIGATION

Case No.: 3:22-cv-03580-WHO

CLASS ACTION

**NOTICE OF UNOPPOSED JOINT
MOTION AND UNOPPOSED JOINT
MOTION TO SEVER CLAIMS
AGAINST UCSF MEDICAL CENTER
AND DIGNITY HEALTH MEDICAL
FOUNDATION INTO SEPARATE
ACTIONS**

13
14 This Document Relates To: *Doe*, Case No.
3:22-cv-04393-WHO

DATE: December 21, 2022
TIME: 2:00 p.m.
CTRM: 2
JUDGE: Hon. Willian H. Orrick

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 21, 2022 at 2:00 p.m., in the courtroom of the Hon. William H. Orrick of the United States District Court of the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, CA 94102, 17th Floor, Courtroom 2, or via Zoom platform as circumstances require, Plaintiff Jane Doe and Defendants The Regents of the University of California (the real party in interest for UCSF Medical Center, which Plaintiff named in her complaint) (“USCF”) and Dignity Health Medical Foundation (“DHMF”) will and hereby do move the Court, pursuant to Federal Rule of Civil Procedure 21, to sever Plaintiff’s claims against UCSF and DHMF into separate actions (“Unopposed Joint Motion”).

This Unopposed Joint Motion is based on this notice, the accompanying memorandum of law, all records and papers on file in this action, and such other materials and argument as may be presented before or at the hearing.

Dated: November 16, 2022

BAKER & HOSTETLER LLP

By: /s/Teresa C. Chow
TERESA C. CHOW (237694)

Attorneys for Defendant
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Dated: November 16, 2022

HOLLAND & KNIGHT LLP

By: /s/Ashley Lynn Shively
ASHLEY LYNN SHIVELY (264912)

Attorneys for Defendant
DIGNITY HEALTH MEDICAL FOUNDATION

1 Dated: November 16, 2022

**WAGSTAFFE, VON LOEWENFELDT,
BUSCH & RADWICK LLP**

2
3 By: /s/James M. Wagstaffe
4 JAMES M. WAGSTAFFE (95535)

5 *Attorneys for Plaintiff*
6 JANE DOE
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BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

1 **I. INTRODUCTION**

2 Plaintiff Jane Doe (“Plaintiff”), and Defendants The Regents of the University of California
3 (the real party in interest for “UCSF Medical Center”) (hereafter “UCSF”), Dignity Health Medical
4 Foundation (“DHMF”), by and through their respective undersigned attorneys, hereby jointly move
5 the Court to sever Plaintiff’s claims against UCSF and DHMF into separate actions (“Unopposed
6 Joint Motion”). The other remaining Defendant, Meta Platforms, Inc. (“Meta”), does not intend to
7 oppose this joint motion.

8 **II. STATEMENT OF FACTS**

9 Plaintiff Jane Doe filed the action *Doe v. Meta Platforms, Inc., UCSF Medical Center, and*
10 *Dignity Health Medical Foundation*, 3:22-cv-04293-WHO on July 25, 2022 (the “Action”). In the
11 Action, Plaintiff raises various claims against Meta, UCSF, and DHMF relating to the alleged use
12 of the Meta Pixel browser tracking technology on healthcare provider websites.

13 On October 12, 2022, this Court entered an Order Granting Motion to Consolidate and
14 Resolving Other Scheduling Matters (Dkt. 73), consolidating the Action with three other cases
15 against Meta relating to the use of the Meta Pixel on healthcare provider websites:

16 *John Doe v. Meta Platforms, Inc.*, Case No. 3:22-cv-03580-WHO (N.D. Cal.)

17 *Doe v. Meta Platforms, Inc.*, Case No. 3:22-cv-04680-WHO (N.D. Cal.)

18 *Jane Doe v Meta Platforms, Inc.*, Case No. 3:22-cv-04963-WHO (N.D. Cal.)

19 In the Consolidation Order, the Court ordered: “Defendants Dignity Health Medical
20 Foundation and UCSF Medical Center are directed to meet and confer with plaintiffs regarding how
21 best to address the claims pending against them.” Consistent with the Court’s Order, UCSF,
22 DHMF, and Plaintiff have conferred and jointly determined that the best way to address the claims
23 is to sever Plaintiff’s claims against UCSF into one separate action and DHMF into another separate
24 action. Meta has indicated that it will not oppose any joint motion to sever.

25 On October 19, 2022, the Court issued a Related Case Order (Dkt. 79), relating the following
26 cases to the Consolidated Action:

27 *Malinda S. Smidga v. Meta Platforms, Inc.*, Case No. 4:22-cv-05753-KAW (N.D. Cal.); and
28

1 *Michael Krackenberger v. Northwestern Memorial Hospital, et al.*, Case. No. 4:22-cv-
2 06020-DMR (N.D. Ill.);

3 On November 7, 2022, the Court issued a Related Case Order (Dkt. 119) relating *Doe v.*
4 *Meta Platforms, Inc.*, Case No. 22-cv-06665-AGT (N.D. Cal.) to the Consolidated Action.

5 It is anticipated that these related cases may ultimately be consolidated with the
6 Consolidated Action. The healthcare defendants in these related cases have previously been
7 severed from those actions before they were transferred to this district.

8 **III. LEGAL STANDARD**

9 “On motion or on its own, the court may at any time, on just terms, add or drop a party. The
10 court may also sever any claim against a party.” Fed. R. Civ. P. 21. The decision of whether to sever
11 a party lies within the discretion of the court. *See Corley v. Google, Inc.*, 316 F.R.D. 277, 282 (N.D.
12 Cal. 2016). Severance is appropriate when joinder would cause prejudice to a party or when
13 severance would better comport with “principles of fundamental fairness and would better advance
14 the administration of justice.” *See id.* at 289. One factor weighing in favor of severance is when
15 “the claims against the different Defendants most likely will involve separate issues of fact and
16 separate witnesses, different evidence, and different legal theories and defenses, which could lead
17 to jury confusion.” *On The Cheap, LLC v. Does 1-5011*, 280 F.R.D. 500, 503 (N.D. Cal. 2011)
18 (quotations and citation omitted).

19 **IV. ARGUMENT**

20 UCSF and DHMF have concerns about defending themselves as part of a consolidated
21 action with potentially five or more other cases against Meta. The other consolidated cases against
22 Meta involve patients of other healthcare providers’ websites besides UCSF or DHMF. The various
23 actions of other healthcare providers, which have nothing to do with UCSF or DHMF, will be at
24 issue in the consolidated litigation and this may unfairly prejudice UCSF or DHMF as the only
25 healthcare defendants. DHMF also intends to file a motion to compel arbitration of Plaintiff’s
26 claims. If granted, UCSF would be the only healthcare provider actively in the Consolidated Action,
27 which may prejudice UCSF. UCSF, as a public entity, should not be at the forefront of this litigation
28 that will also involve the actions of many other healthcare providers.

1 The claims against UCSF, DHMF, and Meta likely present distinct legal issues and some of
2 the claims asserted against Meta and the healthcare providers do not overlap. Further, UCSF and
3 DHMF have separate terms of use and privacy policies that will be at issue in the litigation. Meta,
4 as the developer and provider of the Meta Pixel, is in a different position than the healthcare
5 providers, which are alleged to have (but deny having) placed the Meta Pixel in their respective
6 patient portals. Furthermore, UCSF intends to raise public entity defenses that Meta will not be able
7 to invoke due to sovereign immunity and the replacement of the common-law tort system with the
8 Government Claims Act.

9 UCSF, DHMF, and Meta are also likely to have different witnesses from their respective
10 organizations. Likewise, the discovery sought by and from the healthcare providers and Meta may
11 vary given their respective positions.

12 UCSF, as a public entity, has additional concerns about litigating disputes in the same action
13 as Meta. The Consolidated Action is expected to be complex and there are probably going to be
14 significant disputes between Meta and the plaintiffs. By including UCSF in this Consolidated
15 Action, it will likely require this public entity to expend additional litigation costs than it otherwise
16 would in a separate action, which may have the impact of harming the public. Accordingly, the
17 parties agree it will be more efficient to litigate the claims against UCSF in a separate action.

18 Finally, in the related cases that also named healthcare defendants, those defendants were
19 severed before plaintiffs' claims against Meta were transferred to this district.

20 **V. CONCLUSION**

21 For the foregoing reasons, Plaintiff, UCSF, and DHMF respectfully ask the Court to sever
22 Plaintiff's claims against UCSF and DHMF into individual, separate actions from one another. The
23 moving parties further request that the Court enter an order giving Plaintiff 45 days to file any
24 amended complaint in this Court against each of UCSF and DHMF.

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

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Dated: November 16, 2022

BAKER & HOSTETLER LLP

By: /s/Teresa C. Chow
TERESA C. CHOW (237694)

Attorneys for Defendant
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Dated: November 16, 2022

HOLLAND & KNIGHT LLP

By: /s/Ashley Lynn Shively
ASHLEY LYNN SHIVELY (264912)

Attorneys for Defendant
DIGNITY HEALTH MEDICAL FOUNDATION

Dated: November 16, 2022

**WAGSTAFFE, VON LOEWENFELDT,
BUSCH & RADWICK LLP**

By: /s/James M. Wagstaffe
JAMES M. WAGSTAFFE (95535)

Attorneys for Plaintiff
JANE DOE

LR 5-1(h)(3) ATTESTATION

I, Teresa C. Chow, hereby attest that the other signatories hereto, Ashley Shively and James M. Wagstaffe, have concurred in the filing of the foregoing Unopposed Joint Motion.

/s/Teresa C. Chow
Teresa C. Chow

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

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CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2022, I electronically transmitted the following document **NOTICE OF UNOPPOSED JOINT MOTION AND UNOPPOSED JOINT MOTION TO SEVER CLAIMS AGAINST UCSF MEDICAL CENTER AND DIGNITY HEALTH MEDICAL FOUNDATION INTO SEPARATE ACTIONS** to the Clerk’s Office using the CM/ECF System for filing and service via transmittal of a Notice of Electronic Filing on the following:

James M. Wagstaffe (95535)
Frank H. Busch (258288)
**WAGSTAFFE, VON LOEWENFELDT,
BUSCH & RADWICK LLP**
100 Pine Street, Suite 2250
San Francisco, CA 94111
Telephone: 415-357-8900
Facsimile: 415-357-8910
Emails: wagstaffe@wvbrlaw.com
busch@wvbrlaw.com

Attorneys for Plaintiff
JANE DOE, individually and on behalf
of all other persons similarly situated

Ashley Lynn Shively (264912)
Jacqueline Nicole Harvey (322165)
HOLLAND & KNIGHT LLP
50 California Street, Suite 2800
San Francisco, CA 94111
Telephone: 415-742-6970
Facsimile: 415-743-6910
Emails: ashley.shively@hklaw.com
jacqueline.harvey@hklaw.com

Attorneys for Defendant
DIGNITY HEALTH MEDICAL
FOUNDATION

Michael Graham Rhodes (116127)
Caroline Lebel (340067)
Kyle Christopher Wong (224021)
COOLEY LLP
3 Embarcadero Center, 20th Floor
San Francisco, CA 94111- 4004
Telephone: 415-693-2000
Facsimile: 415-693-2222
Emails: rhodesmg@cooley.com
clebel@cooley.com
kwong@cooley.com

Attorneys for Defendant
META PLATFORMS INC. (formerly
known as Facebook, Inc.)

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

1 Abigail Augus Barrera (301746)
2 **GIBSON, DUNN & CRUTCHER LLP**
3 555 Mission Street, Suite 3000
4 San Francisco, CA 94105
5 Telephone: 415-393-8200
6 Facsimile: 415-393-8306
7 Emails: abarrera@gibsondunn.com

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10 Christian Levis (admitted pro hac vice) *Attorneys for Plaintiff*
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12 Rachel Kesten (admitted pro hac vice) of all other persons similarly situated

13 **LOWEY DANNENBERG, P.C.**
14 44 South Broadway, Suite 1100
15 White Plains, NY 10601
16 Tel: (914) 997-0500
17 Facsimile: 914-997-0035
18 Emails: clevis@lowey.com
19 afiorilla@lowey.com
20 rkesten@lowey.com

21 Mark S Melodia (pro hac vice forthcoming) *Attorneys for Defendant*
22 **HOLLAND & KNIGHT LLP** DIGNITY HEALTH MEDICAL
23 31 West 52nd Street FOUNDATION
24 New York, NY 10019
25 Telephone: 212-513-3200
26 Email: Mark.Melodia@hklaw.com

27 Lauren R. Goldman (admitted pro hac vice) *Attorneys for Defendant*
28 **GIBSON, DUNN & CRUTCHER LLP** META PLATFORMS INC. (formerly
29 200 Park Avenue known as Facebook, Inc.)
30 New York, NY 10166-0193
31 Telephone: 212-351-4000
32 Email: lgoldman@gibsondunn.com

33 Trenton James Van Oss (admitted pro hac vice)
34 **GIBSON, DUNN & CRUTCHER LLP**
35 2543 13th St. NW #2
36 Washington, DC 200009
37 Telephone: 202-887-3716
38 Email: tvanoss@gibsondunn.com

