



January 9, 2025

Via U.S. Mail & Electronic Mail

Jennifer Newstead
Chief Legal Officer
Meta Platforms, Inc.
1 Hacker Way
Menlo Park, CA 94025
jnewstead@fb.com

Re: Meta's Censorship of Pro-Life Facebook and Instagram Accounts

Dear Ms. Newstead:

Earlier this week, Meta admitted to “making too many mistakes” and announced sweeping changes to its content moderation policies in a renewed commitment to free speech.¹ These changes are laudable, but as we explain below, much work remains for Meta to truly safeguard free speech. Recently, Meta permanently disabled the Facebook and Instagram accounts of Steven Ertelt, LifeNews.com (“LifeNews”), and Abby Covington. While Meta claimed it did so because of Facebook’s Community Standards on “human exploitation” and “child sexual exploitation,” those standards are patently inapplicable. The targeted posts were heartfelt pro-life messages that are as far from human and child exploitation as possible. At best, these examples illustrate how deeply flawed Meta’s content-moderation mechanisms are, and at worst, they suggest that Meta is targeting pro-life views for censorship.

If Meta is truly committed to the free-speech principles that it recently announced, it will act swiftly to reinstate Mr. Ertelt’s, LifeNews’s, and Mrs. Covington’s accounts. Alliance Defending Freedom (“ADF”) writes on behalf of Mr. Ertelt, LifeNews, and Mrs. Covington to ask that Meta immediately do so.²

¹ Joel Kaplan, *More Speech and Fewer Mistakes*, META (Jan. 7, 2025), <https://bit.ly/4gDZYce>.

² ADF is a non-profit legal organization that advances every person’s right to live and speak the truth. ADF’s Center for Free Speech is dedicated to ensuring that individuals are free to exercise their right to speak online without unwarranted censorship. Since 2011, ADF has represented parties in 15 victories at the Supreme Court. *E.g.*, *303 Creative, LLC v. Elenis*, 600 U.S. 570 (2023); *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595 (2021); *Uzuegbunam v. Preczewski*, 592

Facts

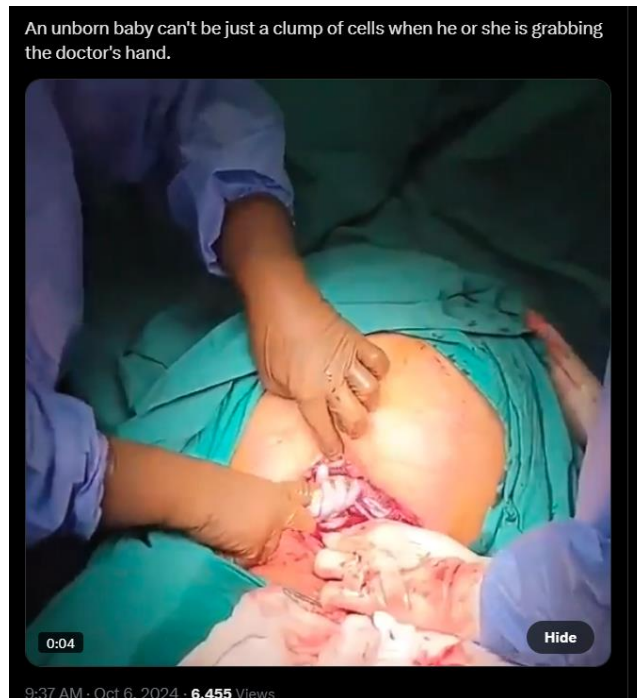
LifeNews.com

LifeNews is an independent news agency and a leading provider of pro-life news. With a team of journalists and bloggers, LifeNews reaches more than 750,000 individuals weekly through its website, email news reports, radio programs, and social media accounts. It primarily covers the topics of abortion, assisted suicide and euthanasia, bioethics issues, campaigns and elections, and legal and legislative issues that affect the pro-life community. Most recently, LifeNews has dedicated significant coverage to the November 2024 election, explaining how various ballot initiatives and candidates would affect the pro-life cause.³ LifeNews relies heavily on its Facebook and Instagram accounts to share news and affect cultural change. Steven Ertelt, who founded LifeNews in 1992 and currently serves as its CEO, also has a Facebook account, and he regularly shares LifeNews content.

On May 22, 2024, Mr. Ertelt shared through his Facebook account a short video depicting a doctor performing a C-section. During the procedure, the yet-unborn child grabbed the finger of the performing physician. The video's caption stated: "An unborn baby can't be just a clump of cells when he or she is grabbing the doctor's hand." Below is a screenshot of the video shared on X:

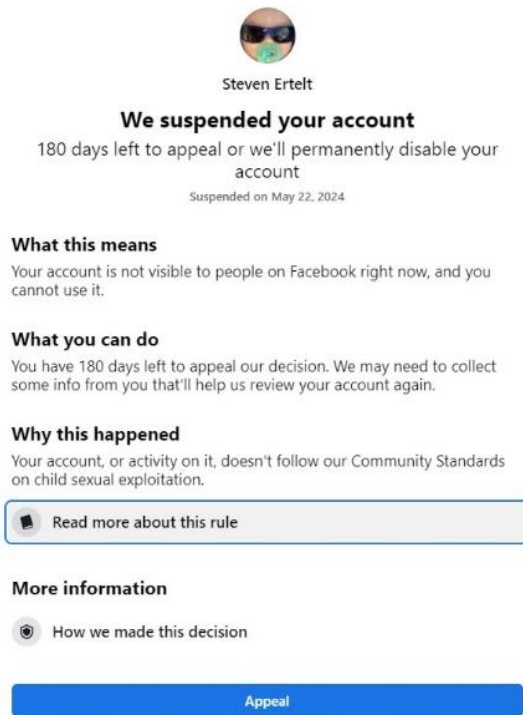
U.S. 279 (2021); *March for Life Educ. & Def. Fund v. California*, 141 S. Ct. 192 (2020); *Thompson v. Hebdon*, 589 U.S. 1 (2019); *Nat'l Inst. of Family & Life Advocates v. Becerra*, 585 U.S. 755 (2018); *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 584 U.S. 617 (2018); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017); *Zubik v. Burwell*, 578 U.S. 403 (2016); *Reed v. Town of Gilbert*, 576 U.S. 155 (2015); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); *Town of Greece v. Galloway*, 572 U.S. 565 (2014); *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011).

³ E.g., Anthony Iafrate, *10 Ballot Measures Would Allow Abortions Up to Birth. America Must Vote No*, LIFENEWS.COM (Nov. 5, 2024), <https://bit.ly/4fqg4Vi>; Grace Porto, *Pro-Life Leader Lila Rose Reverses Course, Votes for Donald Trump*, LIFENEWS.COM (Nov. 5, 2024), <https://bit.ly/3PnUre5>.



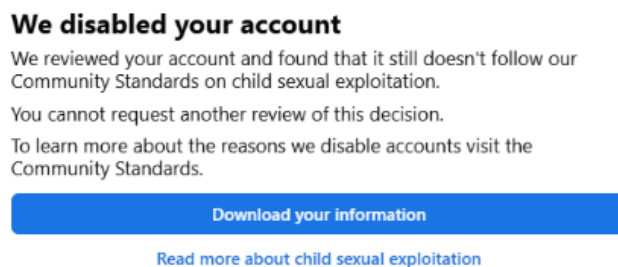
The post generated significant engagement through reactions, shares, and comments. Later that day, however, when Mr. Ertelt attempted to access his Facebook account, he was notified that his account had been suspended. Without explanation, Facebook stated that his account did not “follow our Community Standards on *child sexual exploitation*.” (Emphasis added). This was a shock to Mr. Ertelt—as a pro-life advocate, he has only ever sought to protect children, and he had never shared sexual content through any of his accounts.

As shown below, Facebook only allowed Mr. Ertelt to click “Appeal” without any opportunity to explain his objection to Facebook’s decision.



The screenshot shows a notification from Facebook to Steven Ertelt. At the top is a circular profile picture of a man wearing sunglasses. Below it, the name "Steven Ertelt" is displayed. The main heading is "We suspended your account" in bold. Underneath, it says "180 days left to appeal or we'll permanently disable your account" and "Suspended on May 22, 2024". There are three sections: "What this means" (Your account is not visible to people on Facebook right now, and you cannot use it.), "What you can do" (You have 180 days left to appeal our decision. We may need to collect some info from you that'll help us review your account again.), and "Why this happened" (Your account, or activity on it, doesn't follow our Community Standards on child sexual exploitation.). Below these is a button that says "Read more about this rule". Underneath that is a section titled "More information" with a radio button selected next to "How we made this decision". At the bottom is a large blue button that says "Appeal".

Mr. Ertelt clicked the appeal button and awaited a decision. Approximately four months later, though he still had not heard the outcome of his appeal, he attempted to log back into his Facebook account and was notified that Facebook had permanently disabled his account. As shown below, when he attempted to log in, Facebook informed him that his account “still doesn’t follow our Community Standards on child sexual exploitation” and that he could not request another review of the decision.



The screenshot shows a notification from Facebook stating "We disabled your account". The text reads: "We reviewed your account and found that it still doesn't follow our Community Standards on child sexual exploitation. You cannot request another review of this decision. To learn more about the reasons we disable accounts visit the Community Standards." Below this text is a large blue button that says "Download your information". At the bottom of the notification is a link that says "Read more about child sexual exploitation".

LifeNews used Mr. Ertelt’s Facebook account to create the LifeNews Instagram account. Thus, by permanently suspending Mr. Ertelt’s Facebook account, Facebook also permanently suspended LifeNews’s Instagram account. Now, none of LifeNews’s 20,000 plus Instagram followers or Mr. Ertelt’s 5,000

Facebook friends are able to access any of the content posted on these accounts, and LifeNews and Mr. Ertelt are permanently barred from ever posting on them again.

These account suspensions have caused serious harm to Mr. Ertelt and LifeNews. Prior to its account cancellation, LifeNews had begun to focus on Instagram in its social media strategy, making a dedicated effort to learn the platform and engage with new demographics. But all the engagement LifeNews garnered through those efforts is now gone. Similarly, Mr. Ertelt had been using his Facebook account not only to connect with friends, family, and followers but also to foster a positive reputation in the pro-life community, including by sharing LifeNews content through his account. Yet Meta's actions have brought all that to an abrupt end. Despite the recent election and the growing salience of pro-life issues in the political arena since the Supreme Court's decision to overrule *Roe v. Wade*, LifeNews has experienced a decline in website traffic recently, which is likely due at least in part to its loss of exposure on Instagram and Facebook. Because LifeNews generates revenue exclusively through advertisements on its website and donations, a decline in website traffic directly affects its ability to raise funds.

Abby Covington


Abby Covington is a mother of three with a heart for women facing unplanned pregnancies in challenging circumstances. Based on her Christian faith, Mrs. Covington believes that life begins at conception and that all human life is precious. Following these convictions, Mrs. Covington and her husband, Austin, recently decided to adopt. They hired a lawyer, underwent the required background checks and verifications, and became home-study approved, meaning they are now able to adopt in all 50 states. To share her family's story and connect with an expectant mother, Mrs. Covington also created an Instagram and Facebook account for her family titled "Austin & Abby Adopt—Covington Family Adoption Journey." On these accounts, Mrs. Covington shared family stories and her family's heart for adoption, and she encouraged an expectant mother to reach out if she was seeking an adoptive family for her unborn child.

On November 16, 2024, Abby made a post with the following text on her Facebook and Instagram adoption accounts:


Hey there! 🙌 We're Austin & Abby, hopeful adoptive parents in Indiana!



Firstly, if you're an expectant mother, I want to say we are praying for you and baby. This decision isn't something to be taken lightly, and I pray you have peace and wisdom as you navigate this ❤️ Abby's mother was adopted, and we know without adoption, our family would not be here!


A little about us:

- We've been married for 7 years, and together for 12 (We were high school sweethearts)
- We are blessed with 3 biological children, 2 girls and 1 boy
- Jesus is our Savior. We are active members in our church & thankful for a supportive gospel-centered community!
- We love to cook & try new foods
- Traveling as a family is something we love to do!
- We are Home Study approved and able to adopt in all 50 States 

Our heart for adoption:

We believe children are a gift from the Lord (Psalm 127:3). God has given us the desire to support an expecting mother who will choose life for her baby through the gift of adoption! We love our children, and our prayer is to expand our family while providing a safe & loving home 

 You can view our digital profile book in our bio to learn more about our family 

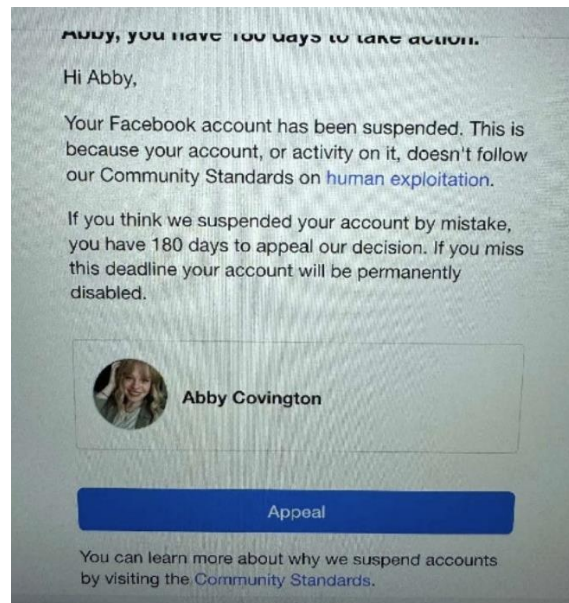
 If you know of an expectant mother seeking to make an adoption plan, you can contact us at [deleted for privacy].

#adoption #adoptionjourney #christianfamily #homeschoolfamily
#chooselife #openadoption #domesticadoption #domesticinfantadoption
#hopefuladoptiveparents #hopingtoadopt #openadoption
#homestudyapproved

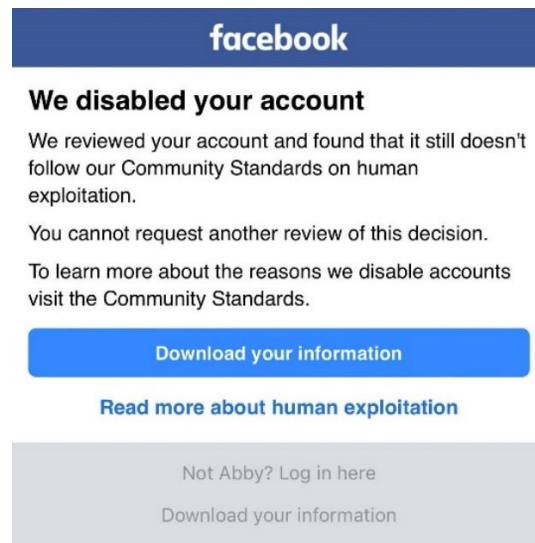
Three days later, Mrs. Covington awoke to a barrage of hateful messages sent to her through Facebook Messenger and numerous hateful comments on her adoption post. One user commented, "I'm adopted and I'd s[\$%]t in your mouth out of spite while you were asleep if I'd been raised that way." Another commented, "[w]ouldn't you be able to have kids if gawd wanted you to?" In the comments, users also tagged (in other words, provided hyperlinks to) two Facebook groups named: "The cult with the sky daddy kink is at it again" and "I'll dedicate my next abortion to you." Through Facebook analytics, Mrs. Covington learned that her post had been seen by over 21,000 users and was shared in a private group—likely one of the groups tagged—that she could not access. To deter further harassment, Mrs. Covington deleted her post from Facebook that day, November 19.

Two days later, when Mrs. Covington attempted to log into Facebook, it notified her that her account had been suspended. Incredibly, Facebook stated that her account did not “follow our Community Standards on *human exploitation*.” (Emphasis added). This was a surprise to Mrs. Covington, since all of her accounts were wholesome and family-friendly, and she had never posted content that would implicate such a serious concern as human exploitation.

As shown below, Facebook only allowed Mrs. Covington to click “Appeal” without any opportunity to explain her objection to Facebook’s decision—the same treatment that LifeNews and Mr. Ertelt experienced.



Mrs. Covington clicked the appeal button and awaited a decision. Two days later, on November 23, she attempted to log into Facebook again but was notified that Facebook had permanently disabled all of her Facebook and Instagram accounts. As shown below, Facebook informed her that her adoption account “still doesn’t follow our Community Standards on human exploitation” and that she could not request another review of the decision.



In addition to her Instagram and Facebook adoption accounts, Mrs. Covington also had personal accounts and accounts for her jewelry, skincare, and makeup business on those platforms. As for her business, her personal and business accounts were the sole means of connecting with customers and generating revenue. Mrs. Covington used the same email for each of these accounts, and Facebook permanently disabled all of them. Mrs. Covington attempted to email Facebook support, but because her email was associated with a permanently disabled account, she was blocked from sending Facebook an email. She also repeatedly tried calling various Facebook helplines but never received a response.

The animus-filled messages that Mrs. Covington received from other Facebook users were understandably distressing. But what is most distressing to her is Facebook's decision to permanently disable all six of her accounts, causing her significant financial and personal harm. Mrs. Covington has lost her family's photos and memories and her ability to communicate with her many Facebook friends and Instagram followers across the country. She has lost her primary tool to reach and assist an expectant mother through the gift of adoption. And she has been harmed economically, losing her business's sole medium of connecting with customers.

Analysis

Meta failed to uphold its free-speech standards.

Meta claims to support free expression on its platforms. Years ago, Mark Zuckerberg stated that it is Meta's responsibility "to remove content when it could cause real danger as effectively as [it] can, and to fight to uphold as wide a

definition of freedom of expression as possible—and not allow the definition of what is considered dangerous to expand beyond what is absolutely necessary. That’s what I’m committed to.”⁴ And earlier this week, Meta recommitted itself to these free-speech principles, announcing that it would end its third-party fact-checking program, lift content restrictions, and better personalize political content to user preferences.⁵

These are admirable steps, but they don’t resolve the past “mistakes” that Meta admits to making.⁶ Mr. Zuckerberg confessed to the House Committee on the Judiciary that, in response to pressure from the government to censor content, Meta “made some choices that, with the benefit of hindsight and new information, [it] wouldn’t make today.”⁷ Nick Clegg, Meta’s president of global affairs, has also admitted that “[w]e know that when enforcing our policies, our error rates are too high, which gets in the way of the free expression we set out to enable. Too often harmless content gets taken down or restricted and too many people get penalized unfairly.”⁸

Meta’s decisions to permanently disable the accounts of Mr. Ertelt, LifeNews, and Mrs. Covington exemplify the company’s failure to protect free speech. Even worse, it suggests a disturbing pattern of censoring pro-life speech under the false pretext of preventing “human” or “child sexual exploitation.” Mr. Zuckerberg has stated that “in general, I don’t think it’s right for a private company to censor politicians or the news in a democracy.”⁹ Nevertheless, Meta has permanently disabled the Instagram account of one of the leading news providers covering pro-life issues in the world and the Facebook account of its CEO. And when Mrs. Covington was brutally harassed on Meta platforms for her faith and pro-life beliefs, Meta remarkably took the side of the *abusers* and permanently disabled Mrs. Covington’s accounts because of her pro-life Facebook post.

Meta’s explanation for its decision to disable these accounts is nonsensical. Meta claims it disabled Mr. Ertelt’s and LifeNews’s accounts for violating

⁴ *Mark Zuckerberg Stands for Voice and Free Expression*, META (Oct. 17, 2019), <https://bit.ly/4fp0lpJ>.

⁵ Kaplan, *supra* note 1.

⁶ *Id.*

⁷ House Judiciary GOP (@JudiciaryGOP), X (Aug. 26, 2024, 3:44 PM), <https://bit.ly/49M4YsF>.

⁸ Nick Clegg, *What We Saw on Our Platforms During 2024’s Global Elections*, META (Dec. 3, 2024), <https://bit.ly/4flaUdq>.

⁹ Meta, *supra* note 4.

Facebook’s Community Standards regarding “child sexual exploitation.” The Community Standards define “child sexual exploitation” as “[c]ontent, activity, or interactions that threaten, depict, praise, support, provide instructions for, make statements of intent, admit participation in, or share links of the sexual exploitation of children.”¹⁰ They clarify that this definition applies to, but is not limited to, content that depicts “[s]exual intercourse” or “[c]hildren with sexual elements,” or “supports, promotes, advocates or encourages participation in pedophilia.”¹¹ Mr. Ertelt’s post of the unborn child’s hand in no way implicates these standards. The post depicted a medical procedure, and only a child’s hand was exposed. It showed no nudity or anything of a sexual nature.

Similarly, Meta claims that it suspended Mrs. Covington’s accounts for violating Facebook’s standards for “human exploitation.” Under these standards, Meta seeks to “remove content that facilitates or coordinates the exploitation of humans, including human trafficking.”¹² It defines “human trafficking” as “the business of depriving someone of liberty for profit. It is the exploitation of humans in order to force them to engage in commercial sex, labor, or other activities against their will. It relies on deception, force, and coercion, and degrades humans by depriving them of their freedom while economically or materially benefiting others.”¹³ Mrs. Covington’s adoption post does not even implicate these standards. Meta’s behavior regarding other similar posts confirms this, as it allows entire Facebook groups dedicated to connecting potential adoptive parents with expectant mothers and surrogates.¹⁴ Rather than “degrad[ing] humans” or “depriving them of their freedom,” Mrs. Covington’s post sought to empower a woman to choose life for her unborn child. She has never posted any content that violates Meta’s standards for “human exploitation.”

Meta breached its Terms of Service.

Meta’s suspensions of Mr. Ertelt’s, LifeNews’s, and Mrs. Covington’s accounts violate Facebook’s Terms of Service. To use its platform, Facebook requires every

¹⁰ *Child Sexual Exploitation, Abuse, and Nudity*, META, <https://bit.ly/3P2LYN3> (last visited Dec. 18, 2024).

¹¹ *Id.*

¹² *Human Exploitation*, META, <https://bit.ly/41B053H> (last visited Dec. 18, 2024).

¹³ *Id.*

¹⁴ *E.g., Private Adoptions for Birthmoms and Parents hoping to Adopt*, Facebook, <https://bit.ly/3VQjIXd> (last visited Dec. 20, 2024); *Surrogates & Ips match group*, Facebook, <https://bit.ly/49KbxMx> (last visited Dec. 20, 2024).

user to agree to its Terms of Service, which constitute an enforceable contract.¹⁵ Under § 4.2 of the Terms, Facebook provides the bases upon which it may suspend a user's account. These include the following scenarios: (1) a user “clearly, seriously, or repeatedly” breaches Facebook's Terms of Service or Community Standards, (2) a user repeatedly infringes on others' intellectual property rights, (3) Facebook is required to do so for legal reasons, (4) a user's account is not confirmed after registration, (5) a user's account is inactive, or (6) a user's account is hacked.¹⁶

Meta suspended the accounts of Mr. Ertelt, LifeNews, and Mrs. Covington for allegedly failing to comply with Meta's Community Standards. But for the reasons explained above, Mrs. Covington's and Mr. Ertelt's posts do not even conceivably implicate these Standards, let alone “clearly, seriously, or repeatedly” violate them. And although Facebook has “discretion” to determine what content violates its Community Standards, “Facebook's discretion to disable an account is to be guided by the articulated factors and cannot be entirely arbitrary”—otherwise, Facebook's failure to abide by the articulated factors constitutes a breach of contract.¹⁷ Additionally, under the covenant of good faith and fair dealing implied in every contract, Meta cannot employ its discretion arbitrarily or discriminatorily. Indeed, a party violates the covenant when it “has discretionary power in the performance or enforcement of the contract but abuses that discretion to deprive the other party of a contractual benefit the other reasonably expected.”¹⁸

Under Facebook's Terms of Service, Mr. Ertelt, LifeNews, and Mrs. Covington reasonably expected that their accounts would not be disabled unless they committed one of the infractions listed in the Terms. By disabling their accounts even in the absence of such an infraction, Meta has deprived them of the contractual benefit of using Meta platforms, breaching its contract, and, at the very least, breaching the implied covenant of good faith and fair dealing. As explained above, along with the various harms to their personal lives, this breach has caused Mr. Ertelt, LifeNews, and Mrs. Covington substantial financial harm. Mr. Ertelt and LifeNews can no longer draw visitors to the LifeNews site through Mr. Ertelt's

¹⁵ See *King v. Facebook, Inc.*, 572 F. Supp. 3d 776, 788 (N.D. Cal. 2021) (plaintiff had “viable theory for breach of contract and/or the implied covenant based on Facebook's disabling of her account”); *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 743 (9th Cir. 2024) (reversing dismissal of breach of contract claim based on Facebook's Terms of Service, finding §230 of Communications Decency Act did not bar claim).

¹⁶ *Terms of Service*, Meta, <https://bit.ly/3ZFjMot> (last visited Dec. 18, 2024).

¹⁷ *King*, 572 F. Supp. 3d at 789.

¹⁸ *Schertzer v. Bank of Am., NA*, 109 F.4th 1200, 1213 (9th Cir. 2024).

Facebook account and LifeNews’s Instagram account, and Mrs. Covington is no longer able to connect with the customers of her small business.

Meta induces users to engage on its platforms while acknowledging that it cannot uphold its end of the bargain.

To use its platforms, Meta requires every user to agree to its Terms of Service. As explained above, Meta provides in its Terms that it will disable accounts for six enumerated reasons, and users like Mr. Ertelt, LifeNews, and Mrs. Covington rely on this provision when deciding to use the platforms. Indeed, large news providers would never invest the resources to garner massive followings if they believed Meta could permanently disable their accounts for an arbitrary or discriminatory purpose without any recourse.

But while Meta induces potential users to invest in its platform by asserting that it follows articulated standards for account suspensions, it does so knowing that it commonly fails to abide by those standards.¹⁹ Making a promise to induce a transaction with the knowledge that the promise cannot be fulfilled is unlawful. As one court has explained, “[a] promise to do something necessarily implies the intention to perform; hence, where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable fraud.”²⁰ By promising to suspend accounts under articulated standards, knowing that it will deviate from them, Meta is acting unlawfully.

Mr. Ertelt, LifeNews, and Mrs. Covington reasonably expected that their accounts would be safe from suspension so long as they abided by Meta’s Terms of Service and Community Standards. But unknown to them, Meta’s promise was unreliable, and they have each suffered financially as a result.

Conclusion

Meta has recently promised to change its ways and protect free speech on its platforms. These situations provide a litmus test for whether Meta will live up to its public announcement or continue to censor and restrict the marketplace of ideas.

¹⁹ See Clegg, *supra* note 8 (“Too often harmless content gets taken down or restricted and too many people get penalized unfairly.”); House Judiciary GOP, *supra* note 7 (Mr. Zuckerberg admitting that “I also think we made some choices that, with the benefit of hindsight and new information, we wouldn’t make today.”); Meta, *supra* note 4 (Mr. Zuckerberg admitting that “I’m committed to the values we’re discussing today, but we won’t always get it right.”).

²⁰ *Lazar v. Superior Ct.*, 12 Cal. 4th 631, 638 (1996).

Because Meta violated its free-speech standards, breached its Terms of Service, and failed to uphold its promises, Mrs. Covington, Mr. Ertelt, and LifeNews request that Meta promptly remedy the situation by:

1. Reinstating Mrs. Covington's, Mr. Ertelt's, and LifeNews's disabled Facebook and Instagram accounts; and
2. Referring Meta's decision to label Mrs. Covington's adoption post as "human exploitation" and its decision to label Mr. Ertelt's post of the child's hand as "child sexual exploitation" to Meta's Oversight Board. We trust that the Oversight Board will provide helpful guidance to Meta on how to handle similar situations in the future.

We appreciate your careful attention to this matter. We ask that you respond to this request by no later than January 22, 2025.

Respectfully submitted,

s/Philip A. Sechler
Philip A. Sechler

s/Timothy D. Chandler
Timothy D. Chandler

Counsel for Steven Ertelt, LifeNews.com, and Abby
Covington