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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

SNAP INC., a Delaware corporation, *Plaintiff*, v. DEREK E. BROWN, in his official capacity as Attorney General of Utah, KATHERINE HASS, in her official capacity as Director of the Division of Consumer Protection of the Utah Department of Commerce, *Defendants.*	**MOTION TO DISMISS UNDER RULE 12(b)(1) AND 12(b)(6) OR, ALTERNATIVELY, FOR STAY OR A MORE DEFINITE STATEMENT UNDER RULE 12(e)** Case No. 2:25-cv-490 District Judge Jill N. Parrish **HEARING REQUESTED**

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Defendants Derek E. Brown and Katherine Hass ("Defendants") move to dismiss Plaintiff Snap, Inc.'s ("Snap") Complaint under the principles of *Younger v. Harris*, 401 U.S. 27 (1971), and because Snap's claims are not ripe for adjudication.[1] Alternatively, Defendants ask the Court to stay this matter under the principles of *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), and that Snap be required to file a more definite Complaint under Rule 12(e).

Snap's lawsuit broadly seeks to prevent the State of Utah from bringing any lawsuit—or even initiating any future investigation of Snap—under either the Utah Consumer Sales Practices Act ("UCSPA"), Utah Code §§ 13-11-1, *et seq.*, or the Utah Consumer Privacy Act ("UCPA"), Utah Code §§ 13-61-10, *et seq.*, regarding a laundry list of aspects of Snap's flagship smartphone application, Snapchat. (ECF No. 1). Snap filed this lawsuit after receiving the Utah Attorney General's pre-suit notice concerning several asserted violations of the UCPA. (ECF No. 11). Rather than cure the violations and stop harming Utah consumers, Snap ran to federal court to file this lawsuit before the right-to-cure period had run and to seek an *ex parte* temporary restraining order prohibiting Defendants from initiating *any* future lawsuit or investigation under the UCSPA or UCPA. (ECF No. 5). The Court denied that motion, finding no irreparable harm (and certainly not the kind of irreparable harm needed to justify *ex parte* relief). (ECF No. 12). Shortly thereafter, the State of Utah (through the Attorney General) and the Utah Division of Consumer Protection (collectively, "the State") commenced a civil enforcement action in Utah state court. (ECF No. 35).

[1] This motion is filed under both Federal Rule of Civil Procedure 12(b)(1) and (b)(6), because the Tenth Circuit has given conflicting signals about whether *Younger* abstention concerns jurisdiction. *Graff v. Aberdeen Enterprizes, II, Inc.*, 65 F.4th 500, 523 n.32 (10th Cir. 2023).

Snap's federal lawsuit runs headlong into the "strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances." *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982). That "strong federal policy" counsels in favor of dismissing this action in favor of the parallel enforcement proceeding in state court. Insofar as Snap's claims concern hypothetical future investigations or litigation, those claims are not yet ripe for this Court to review and must also be dismissed. Alternatively, this case should be stayed under the *Colorado River* doctrine in deference to the parallel state-court proceeding or Snap should be required to file a more definite Complaint.

Given the dispositive nature of this Motion and the importance of the issues herein to Defendants, good cause exists for oral argument, and Defendants respectfully request a hearing be set for this Motion. Defendants also request that the hearing on this Motion be coset with the hearing on Plaintiffs' Motion for Preliminary Injunction that Defendants separately requested.

I. BACKGROUND

A. The relevant parties.

The Utah Division of Consumer Protection ("DCP")[2] has broad authority to investigate potential deceptive and unconscionable acts prohibited by the UCSPA, which is a general consumer protection statute that applies to all suppliers in connection with consumer transactions in Utah. Utah Code §§ 13-11-3, -5, -16. DCP also may bring suit to enjoin a supplier who has, is, or is likely to violate the UCSPA, obtain recovery on behalf of consumers, and to obtain a fine

[2] The nominal Defendants are two Utah officials, but "a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office." *Will v. Mich. Dep't of Police*, 491 U.S. 58, 71 (1989).

for violations. *Id.* § 13-11-17. A supplier is any "seller, lessor, assignor, offeror, broker or other person who regularly solicits, engages in, or enforces consumer transactions, whether or not the person deals directly with the consumer." *Id.* § 13-11-3(5).

Similarly, DCP has authority to investigate violations of the UCPA and to refer violations to the Utah Attorney General, who may bring a civil enforcement action. *Id.* §§ 13-61-401 and -402(2). The UCPA broadly applies to (1) persons who conduct business in or produce products or services that target consumers in Utah and "who determine[] the purposes for which and the means by which personal data are processed" ("controllers") and (2) persons who process data on behalf of controllers ("processors") and meet minimum revenue and data processing requirements.[3] *Id.* §§ 13-61-101(12) and (26), -102. In part, the UCPA provides standards for notices that a controller must provide to consumers regarding data collected, as well as rights to consumers to opt out of the sale of data and the processing of certain sensitive data. *Id.* § 13-61-302. Before the Attorney General can initiate a civil enforcement action, it must provide the alleged violator with a 30-day notice of the violations of the UCPA with an opportunity to cure. *Id.* § 13-61-402(3).

Snap owns and operates the social media app Snapchat that consumers can download on mobile devices. (ECF No. 1 ¶¶ 22, 24). Snap publicly states that users must be at least thirteen years old to create an account on Snapchat. (ECF No. 1 ¶ 25). Snap makes money by collecting and selling data about Snapchat users to advertisers and other third-parties, as well as by using

[3] For the UCPA to apply, the controller or producer must (1) have an annual revenue of $25,000,000 or more, and (2) control or process the personal data of 100,000 or more consumers, or derive over 50% of its revenue from the sale or personal data and control or process personal data of 25,000 or more consumers. *Id.* § 13-61-102(1)(b) and (c).

user data to inform and refine Snapchat's features to increase engagement. (ECF No. 1 ¶ 33; ECF No. 35 ¶¶ 38–43, 68).

Users initially used Snapchat mainly to send ephemeral (disappearing) messages, pictures, and videos to other users. (ECF No. 1 ¶¶ 23, 26). Since Snapchat's inception, Snap has continually added new features to keep and increase user engagement; those features include: (1) photo filters and lenses; (2) Stories, a feature that allows users to post videos and photos visible to their friends or the public that disappear after 24 hours; (3) Spotlight, an algorithm-driven feed; (4) Snap Map, where users share location information with other users; (5) Snapstreaks, a metric that rewards users with consistent engagement; (6) push notifications that Snap sends to users to notify them of activity on their Snapchat account when they are not on the app; and most recently, (7) MyAI, a chatbot that users can message, advertised as a user's "best friend." (ECF No. 1 ¶¶ 26–31, 51; ECF No. 35 ¶¶ 34, 78, 86, 113, 130).

B. Utah's investigation of Snap under the UCSPA and UCPA.

In 2023, DCP issued an investigative subpoena to Snap under Utah Code sections 13-2-6 and 13-11-16 based on DCP's reasoned belief that Snap was engaged in or about to engage in acts or practices that violate the UCSPA. (ECF No. 1 ¶¶ 44–45).

The Attorney General's office separately sent Snap a subpoena in February 2025 under 15 U.S.C. § 6504, requesting information about Snap's data collection and parental consent practices as related to the Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. §§ 6501, *et seq*. Snap did not file any legal action challenging the scope or authority of DCP or the Attorney General to issue these subpoenas and instead produced information in response to them throughout 2024 and 2025.

C. Utah's Minor Protection in Social Media Act.

At roughly the same time, the Utah legislature considered, and adopted, the Minor Protection in Social Media Act, Utah Code §§ 13-71-101, *et seq.* ("Social Media Act"), aimed at vindicating the State's indisputably "compelling interest in safeguarding the well-being and privacy of minors in the state." *Id.* § 13-71-102(1). In relevant part, the Social Media Act required certain social media companies to institute age assurance protections (i.e., age verification). The Social Media Act did not alter or limit the enforceability of other general laws protecting the public that might otherwise cover social media companies. *Id.* § 13-71-401(3) ("Nothing in this [Act] shall displace any other available remedies or rights authorized under the laws of this state or the United States."). In a lawsuit brought by a trade group of which Snap is a part, Utah was preliminarily enjoined from enforcing the Act. *NetChoice v. Reyes*, 748 F. Supp. 3d 1105 (D. Utah 2024). The *NetChoice* court held that the Act imposes content-based restrictions on speech which are not sufficiently tailored to serve a compelling governmental interest. *See id.* at 1124–30. Defendants are currently appealing that ruling. No. 24-4100 (10th Cir.).

D. This lawsuit.

Amidst the *NetChoice* litigation, on May 22, 2025, the Attorney General sent Snap's counsel a formal Notice of Violation of the UCPA in accordance with Utah Code section 13-61-402(3)(a) (the "Notice"). (ECF No. 1-2). The Attorney General had concluded Snap was operating in violation of the UCPA by (i) failing to provide material information to Utah consumers using Snapchat about the processing of their data, including that data was shared with a third-party; (ii) collecting sensitive data from its Utah users using its My AI feature without

giving notice and opportunity to opt out; and (iii) collecting data from users it knows or should have known are under thirteen years of age without verifiable parental consent as required under COPPA, thus violating section 13-61-302(3)(b) of the UCPA. (*Id.* at 2–3). The only mention of age verification in the Notice was that Snap knew or should have known that children under thirteen use its platform in part because it has an "inadequate age gate and deficient guardrails to prevent access by those under the age of thirteen." (*Id.* at 3).

Under Utah Code section 13-61-402(3)(a), Snap had thirty days from the receipt of the Notice to cure the violations before the Attorney General could initiate an action against Snap for those UCPA violations. Snap did not cure in that thirty-day period. Instead, on June 19, 2025 (two days before the cure period expired), Snap filed this lawsuit. (ECF No. 1). That Complaint asks this Court to enjoin the Attorney General and Director of DCP from "filing suit against Snap, or launching a new investigation into Snap" under the UCPA or UCSPA "for reasons related to":

i. Age verification;
ii. Parental consent;
iii. Implementation of other safety features;
iv. Representations, or lack thereof, about the safety and security of Snapchat for its users;
v. Illicit content posted by third parties on Snapchat;
vi. Information generated during user interactions with My AI;
vii. Ephemeral messaging;
viii. Snap's recommendation algorithm; and
ix. Snapstreaks.

(*Id.* at 38–39). The Complaint also alleges that all potential future investigations or lawsuits that "relate[]" to these features would violate Snap's First Amendment rights and rights under Section 230 of the Communications Decency Act, 47 U.S.C. § 230 ("Section 230"). (*Id.* ¶¶ 73–

91). Snap additionally asks for declaratory judgment that "Defendants are threatening to sue Snap for reasons that contravene the First and Fourteenth Amendments of the U.S. Constitution" and "for reasons that contravene Section 230" and that "Snap's age verification related policies comply with COPPA." (*Id.* ¶ 94).

At the same time Snap filed the Complaint, and before serving anything on the Attorney General or the Director of DCP, Snap filed *ex parte* a motion for a temporary restraining order ("TRO Motion") asking the Court to enjoin the Attorney General and Director of DCP from filing any lawsuit against Snap. (ECF No. 5). This Court quickly denied Snap's TRO Motion, finding no irreparable harm because "[i]t is difficult to imagine how the mere filing of a civil lawsuit against a party could ever constitute irreparable harm since the sued party would have a due process right to defend the lawsuit and raise any legitimate defenses." (ECF No. 12 at 4). The Court also noted that "[i]n our system of federalism, state courts have concurrent jurisdiction with federal courts over most federal claims, including those arising under the U.S. Constitution" and "under the Supremacy Clause, state courts are not only permitted but obligated to enforce federal constitutional rights." (*Id.*). The Court additionally found that the State would be harmed by any prohibition on its ability to protect Utah consumers: "[t]he Attorney General surely could name many harms to the public from failing to enforce Utah's duly enacted privacy laws designed to protect its citizens' data and communications." (*Id.* at 5).

On June 30, 2025, DCP and the State of Utah sued Snap in the Third Judicial District for the State of Utah alleging Snap was violating the UCSPA and UCPA ("Civil Enforcement Complaint"). (ECF No. 26-1). The Civil Enforcement Complaint alleges that Snap violates the UCSPA by committing unconscionable practices including (i) incorporating features in its app

designed to be addictive to children (including ephemeral content, social comparison metrics, push notifications, beauty filters, personalization algorithms, Snap Map, and My AI); (ii) hiding and disincentivizing features that could mitigate children's engagement with the app; and (iii) incorporating design features that facilitate and enable the distribution of illegal drugs and child sexual exploitation. (*Id.* ¶¶ 245–262).

The Civil Enforcement Complaint also alleges Snap is committed deceptive practices in violation of the UCSPA by misrepresenting: (i) the safety of Snap's platform; (ii) that it prohibits content that exploits children; (iii) that it proactively removes content that violates its policies; (iv) that it programs My AI to be safe and consider the user's age in its responses; (v) that Snap provides extra protection for teen accounts; (vi) that Snap only shares user location with the user's friends that the user permits to see location data; and (vii) that Snap prevents children under the age of thirteen from accessing and using Snapchat. (*Id.* ¶¶ 263–267). The Civil Enforcement Complaint goes on to allege Snap is deceiving Utah consumers by failing to adequately disclose the data it collects from its users through its My AI feature. (*Id.* ¶ 268). Lastly, the Complaint alleges that Snap violates the UCPA for the same reasons set forth in the Notice letter mailed on May 22, 2025. (*Id.* ¶¶ 269–281).

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(1) provides for a challenge to a court's subject matter jurisdiction. "The court's task in resolving a Rule 12(b)(1) motion is a relatively limited one; it is only whether the court lacks authority to adjudicate the matter." *Kenny v. Helix TCS, Inc.*, 284 F. Supp. 3d 1186, 1188 (D. Colo. 2018). "A court lacking jurisdiction cannot render judgment but must dismiss the cause at any stage of the proceedings in which it becomes

apparent that jurisdiction is lacking." *Basso v. Utah Power & Light Co.*, 495 F. 2d 906, 909 (10th Cir. 1974). "The party invoking the jurisdiction of the court has the duty to establish that federal jurisdiction does exist." *Id.*

Rule 8(a)(2) requires "a short and plain statement of the claim showing that the pleader is entitled to relief." To withstand a Rule 12(b)(6) motion to dismiss, "a complaint must have enough allegations of fact, taken as true, 'to state a claim to relief that is plausible on its face.'"[4] *Kan. Penn Gaming, LLC v. Collins,* 656 F.3d 1210, 1214 (10th Cir. 2011) (quoting *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570 (2007)).

Federal Rule of Civil Procedure 12(e) provides: "A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." The question for the court is whether "the Complaint is sufficiently definite to enable the Defendant to know what is charged." *Usery v. Loc. 886, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen, & Helpers of Am.*, 72 F.R.D. 581, 582 (W.D. Okla. 1976).

III. ARGUMENT

A. The Court should abstain from hearing Snap's challenge to the civil enforcement action currently pending in Utah state court.

"The normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions." *Younger*, 401 U.S. at 45. That is why the Supreme Court held over 50 years ago that the basic concern for the authority of state courts in our federal

[4] As stated above, Defendants are bringing this motion under Rule 12(b)(6) only insofar as this Court determines that the *Younger* abstention does not implicate the Court's subject matter jurisdiction and that this motion is better raised under Rule 12(b)(6) than Rule 12(b)(1).

system requires federal courts, in nearly all circumstances, to abstain from enjoining pending state criminal proceedings. *Id.* at 43–45. The Court later held that the same "concern for comity and federalism" requires a similar result when a federal court is asked to enjoin state-law civil enforcement proceedings. *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 367–68 (1989) ("NOPSI").

Courts have distilled three prerequisites for the application of the so-called *Younger* abstention: "*Younger* requires that a federal court refrain from hearing an action over which it has jurisdiction 'when [the] federal proceedings would (1) interfere with an ongoing state judicial proceeding (2) that implicates important state interests and (3) affords an adequate opportunity to raise the federal claims.'" *Joseph A. ex rel. Corrine Wolfe v. Ingram*, 275 F.3d 1253, 1267 (10th Cir. 2002) (quoting *J.B. ex rel. Hart v. Valdez,* 186 F.3d 1280, 1291 (10th Cir. 1999)). If those criteria are met, abstention is mandatory. *Id.*

1. Nothing of substance occurred in federal court before the Civil Enforcement Complaint was filed in state court.

Here, there is little doubt that these criteria are met. As to the first factor, the relevant inquiry is whether the state judicial proceedings were "filed [] before any proceedings of substance on the merits have taken place in the federal court." *Hicks v. Miranda*, 422 U.S. 332, 349 (1975) (holding that the first factor was met when the federal plaintiffs were charged the day after the federal complaint was served); *see also Credit One Bank, N.A. v. Hestrin*, 60 F.4th 1220, 1225 (9th Cir. 2023) (holding that *Younger* applies if federal action "had not moved beyond the embryonic stage" when state court action was initiated). Moreover, when state law mandates that the target of an investigation receive pre-suit notice, state proceedings are

considered to have begun on the day that notice is given. *See Amanatullah v. Colo. Bd. of Med. Exam'rs*, 187 F.3d 1160, 1163–64 (10th Cir. 1999) ("We hold that state proceedings began . . . when the Colorado Board issued its first '30–day' letter . . . advising [Amanatullah] of its investigation into the allegations . . . .").

Here, Snap filed this case only after the Attorney General sent the statutorily required pre-suit notice letter. The Civil Enforcement Complaint was then filed after the notice period expired and just days after Snap filed and served its federal Complaint and before Defendants had answered. The state enforcement action was therefore initiated before any proceedings of substance had taken place in this forum.

Snap might attempt to point to the Court's denial of its TRO Motion as something of substance in this forum. Of course, that ruling does not predate the pre-suit notice letter, and so is irrelevant under *Amanatullah*. Also, that motion was filed *ex parte*, (ECF No. 5), and this Court's Order did not delve into the merits of Snap's legal challenges. (ECF No. 12). *See Hicks*, 422 U.S. at 338, 348–50 (denial of a TRO is not a proceeding of substance).[5] The Civil Enforcement

[5] There is some disagreement among courts about whether a *grant* of a temporary restraining order may be considered a proceeding of substance. *Compare Wal-Mart Stores, Inc. v. Rodriguez*, 236 F. Supp. 3d 200, 209 (D.P.R. 2002) (grant of TRO a proceeding of substance when it is issued following a contested hearing) *with Kim-Stan, Inc. v. Dep't of Waste Mgmt.*, 732 F. Supp. 646, 651 (E.D. Va. 1990) (grant of TRO not a proceeding of substance because temporary restraining order may be issued *ex parte* and without any specific findings of fact or conclusions of law, and is time-limited in nature). We mention this to highlight that there is no disagreement that the *denial* of a TRO is not a proceeding of substance. *See Hestrin*, 60 F.4th at 1225 (9th Cir. 2023) ("There are two bright line rules for evaluating whether proceedings of substance on the merits have taken place and a case has thus advanced beyond the embryonic stage. First, the denial of a temporary restraining order is never a proceeding of substance on the merits . . . .").

Complaint was filed before proceedings of substance had taken place in this action and is still pending in the Third Judicial District Court of the State of Utah. Therefore, the first factor is met.

2. Utah has a strong interest in vindicating its consumer protection laws.

As to the second factor, the Court "do[es] not look narrowly to [the State's] interest in the outcome of the particular case" but rather look to "the importance of the generic proceedings to the State." *NOPSI*, 491 U.S. at 365. The Supreme Court more recently made clear that the type of civil enforcement proceedings for which *Younger* abstention would apply "are characteristically initiated to sanction the federal plaintiff, *i.e.*, the party challenging the state action, for some wrongful act." *Sprint Comm'ns, Inc. v. Jacobs*, 571 U.S. 69, 79 (2013). "[A] state actor is routinely a party to the state proceeding and often initiates the action." *Id.* "Investigations are commonly involved, often culminating in the filing of a formal complaint or charges." *Id.* at 79–80. State actions brought to enforce its consumer protection laws are usually held to implicate important state interests for the purposes of *Younger* abstention. *See, e.g.*, *Bristol-Myers Squibb Co. v. Connors*, 979 F.3d 732, 737 (9th Cir. 2020); *In re Standard & Poor's Rating Agency Litig.*, 23 F. Supp. 3d 378, 410 (S.D.N.Y. 2014) (collecting cases and observing that "courts have repeatedly held that state actions to enforce consumer-protection statutes and laws against deceptive business practices are sufficiently important for *Younger* purposes"); *Bluehippo Funding, LLC v. McGraw*, No. CIV.A. 2:07-0399, 2007 WL 6216559, at *12 (S.D.W. Va. Oct. 25, 2007) (unpublished) (collecting cases where "courts have accepted the broader state interest in consumer protection as qualifying for consideration under the second step in the *Younger/Middlesex* test").

Under these cases, important state interests are plainly at play here. The State has brought an action against Snap for the company's alleged unconscionable and deceptive practices that violate the UCSPA and violations of consumer's privacy rights under the UCPA. (ECF No. 35 ¶¶ 245–281). Utah has a strong interest in protecting Utahns and our children from these unlawful practices, and this enforcement action has all the hallmark characteristics set forth in *Sprint* of the type of civil enforcement proceedings for which *Younger* abstention applies. *Sprint*, 571 U.S. 79–80. Therefore, the second factor is met.

3. Snap will have a full and fair opportunity to present its federal defenses to the State's claims in state court.

As to the third factor, the relevant inquiry is "whether the federal plaintiff has an adequate opportunity to present the federal challenge" in the state proceeding. *Middlesex*, 457 U.S. at 434. "So long as the constitutional claims . . . can be determined in the state proceedings and so long as there is no showing of bad faith, harassment, or some other extraordinary circumstance that would make abstention inappropriate, the federal courts should abstain." *Id.* at 435. This is based on the principle that "[t]he accused should first set up and rely [upon] his defense in the state courts, even though this involves a challenge of the validity of some statute, unless it plainly appears that this course would not afford adequate protection." *Younger*, 401 U.S. at 44 (citation omitted).

As this Court already held when denying Snap's TRO Motion, Snap has an opportunity to raise—and the Utah state court is just as capable of adjudicating—the federal challenges raised in Snap's federal Complaint. (ECF No. 12). In fact, three separate judges in the Third Judicial District Court of the State of Utah have heard and decided very similar challenges under

the First Amendment and Section 230 to civil enforcement actions brought under the UCSPA against other social media companies. *See Utah Div. of Consumer Prot. v. Meta Platforms, Inc.*, No. 230908060, 2024 WL 3741422 (Utah Dist. Ct. July 18, 2024) (unpublished) ("*Meta*"); *Utah Div. of Consumer Prot. v. TikTok Inc.*, No. 230907634, 2024 WL 5469059 (Utah Dist. Ct. Nov. 12, 2024) (unpublished) ("*TikTok I*"); *Utah Div. of Consumer Prot. v. TikTok Inc.*, No. 240904292, 2025 WL 1125908 (Utah Dist. Ct. Feb. 20, 2025) (unpublished) ("*TikTok II*"). Meta and TikTok have also presented the same First Amendment and Section 230 arguments to the Utah Supreme Court. *Utah Div. of Consumer Prot. v. Meta Platforms, Inc.*, No. 20240875-SC (Utah Oct. 18, 2024) (unpublished, attached as Exhibit A); *Utah Div. of Consumer Prot. v. TikTok Inc.*, No. 20241276-SC (Utah Feb. 10, 2025) (unpublished, attached as Exhibit B). Snap may not like these decisions, but Snap undeniably has a fair opportunity to raise these same issues in the pending state court proceeding, just like Meta and TikTok before it. Therefore, the third factor is met.

4. No exceptions to *Younger* apply.

Snap's filings thus far in this federal case have tried to portray the State's enforcement action as a strategic play by a frustrated regulator seeking to get around an unfavorable decision by advancing the same theories under different laws. This is not the State's motivation. Snap is seemingly seeking to shoehorn this lawsuit to fit within a narrow exception to *Younger*. The *Younger* court recognized that circumscribed circumstances might exist where respect for a state court's ability to vindicate federal rights should give way to the exercise of federal equitable authority. For instance, *Younger* held that an injunction was unnecessary in that case because there had been no showing that the prosecution was "brought in bad faith or [was] only one of a

series of repeated prosecutions to which [the plaintiff] will be subjected." 401 U.S. at 49. *Younger* also recognizes that federal intervention might be warranted if a state law were "flagrantly and patently" unconstitutional. *Id.* at 53. Despite Snap's emphatic focus on the Social Media Act and the *NetChoice* litigation in its Complaint, neither the bad faith nor repeated prosecutions concerns apply here.

In determining whether a state action is brought in bad faith, courts consider whether it is frivolous, motivated by the defendant's membership in a suspect class or their exercise of constitutional rights, or constitutes an abuse of enforcement discretion. *See Phelps v. Hamilton*, 59 F.3d 1058, 1065 (10th Cir. 1995). None of these considerations favors Snap, as a simple comparison of the *NetChoice* proceedings and the Attorney General's allegations shows.

The Social Media Act set minimum standards for social media companies, including implementing an age-assurance system to determine whether an account holder is a minor; to set all default settings to prioritize privacy protections; and to disable certain features that prolong user engagement (autoplay, scroll, and push notifications). Utah Code § 13-71-202. The Social Media Act's requirements applied to companies that own or operate a "social media service." *Id.* § 13-71-101(13).

The *NetChoice* court concluded that the definition of social media service "draws distinctions between websites that allow users to interact socially and websites that serve another function or purpose" and therefore the Social Media Act was "facially content based." *NetChoice*, 748 F. Supp. 3d at 1121. Applying strict scrutiny, the trial court preliminarily enjoined the Attorney General and Director of DCP from "enforcing any part of the Utah Minor

Protection in Social Media Act, Utah Code §§ 13-71-101 to 401, pending final disposition of the issues in [that] case." *Id.* at 1134.

Here, by contrast, the Civil Enforcement Complaint concerns Snap's deceptive and unconscionable practices and collection of data from users without required notice and opt out opportunities. Snap's Complaint ignores the key differences in the elements to prove violations under the UCPA and UCSPA and the Social Media Act. *Compare* Utah Code § 13-71-202 *with* Utah Code §§ 13-11-3, -4, -5 *and* Utah Code § 13-61-302. Some subject-matter overlap exists because here the enforcement of the UCSPA and UCPA is against a social media company who targets kids. However, the enjoining of the enforcement of one law does not impact Defendants' ability to enforce completely separate laws with different elements, even if there is some overlap in the conduct being regulated. *See United States v. Pearson,* 203 F.3d 1243, 1267–68 (10th Cir. 2000) (recognizing the same conduct may violate multiple laws).

The *NetChoice* preliminary injunction in no way limits the ability of the State to enforce other separate laws of general applicability, like the UCSPA and UCPA, against social media companies like Snap. Meta had made a similar argument about a prior version of the Social Media Act preempted the UCSPA in the Third Judicial District Court, and it was rejected. *Meta*, 2024 WL 3741422 at *6 (rejecting Meta's argument that "the Legislature's passage of the Social Media Regulation Act [] somehow alters or sends a message concerning the UCSPA").

Finally, there is no serious argument that the UCSPA or the UCPA is patently or flagrantly unconstitutional.

Younger abstention therefore applies, and the Court should dismiss this action insofar as Snap seeks to enjoin the civil enforcement action pending in the Third Judicial District of the State of Utah.

B. Any remaining challenges Snap brings are not yet ripe for review.

The remaining claims in this case concern Snap's request to enjoin, apparently for all time, any future investigations into or litigation against Snap concerning a range of topics. These claims are not ripe.

"Ripeness is a justiciability doctrine designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements[.]" *Nat'l Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803, 807 (2003) (internal quotations omitted). "The ripeness issue . . . focuses on . . . whether the harm asserted has matured sufficiently to warrant judicial intervention." *Morgan v. McCotter*, 365 F.3d 882, 890 (10th Cir. 2004). On a challenge to the operation or enforcement of a statute, the question is whether the plaintiff faces "a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement" or "whether the alleged injury is too 'imaginary' or 'speculative' to support jurisdiction." *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (quoting *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979)).

"As a general rule, determinations of ripeness are guided by a two-factor test, 'requiring [the court] to evaluate both the fitness of the issue for judicial resolution and the hardship to the parties of withholding judicial consideration." *Initiative & Referendum Inst. v. Walker*, 161 F. Supp. 2d 1307, 1311 (D. Utah 2001) (quoting *Sierra Club v. Yeutter*, 911 F.2d 1405, 1415 (10th Cir. 1990)). "In determining whether an issue is fit for judicial review, the central focus is on

'whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." *Id.* (quoting 13A Wright, Miller & Cooper, Federal Practice & Procedure, § 3532 at 112). This factor is often focused on "whether a determination of the merits turns upon strictly legal issues or requires facts that may not yet be sufficiently developed." *Id*. In assessing the second factor, the inquiry "typically turns upon whether the challenged action creates a direct and immediate dilemma for the parties." *Id.* (quoting *New Mexicans for Bill Richardson v. Gonzales*, 64 F.3d 1495, 1499 (10th Cir. 1995)).

To the extent all of Snap's claims in this federal case are not otherwise subsumed as defenses to the Civil Enforcement Complaint covered by *Younger* abstention, all that could be left of Snap's claims in this case is that its First Amendment rights or any Section 230 protections would bar any additional speculative future lawsuit or investigation under the UCSPA or UCPA. But none of those remaining claims are ripe. Any remaining First Amendment challenge brought by Snap in this matter would necessarily be an as-applied challenge to statutes of general applicability for which any enforcement beyond the already pending Civil Enforcement Complaint is merely speculative.[6] "The mere possibility of prosecution or the possibility that sanctions authorized under a general regulatory regime may be

[6] Snap might try to argue that a more relaxed ripeness standard applies to First Amendment challenges, but that is true for only facial challenges, not as-applied challenges like this. *See Initiative & Referendum Inst.*, 161 F. Supp. 2d at 1312 (applying a relaxed ripeness analysis "where a facial challenge, implicating First Amendment values, is brought"); *Martin Tractor Co. v. F.T.C.*, 627 F.2d 375, 380 (D.C.C. 1980) (discussing the relaxed ripeness standard "[w]ithin the First Amendment arena . . . when a facial attack is launched," concluding that such a relaxed standard may be applied in such circumstances because the chill suffered by the challenged law "was not limited to the injury experienced by the complaining individual").

imposed when the regulatory agency is confronted with specific facts developed in some future agency proceeding is insufficient." *Martin Tractor Co.*, 627 F.2d at 379 (footnote omitted).

There would also need to be factual development about what potential violations of what laws would be investigated or enforced, before this court could begin to analyze any as-applied constitutional challenge, or to whether Section 230 even applied. In an as-applied challenge, the Court must evaluate whether the application of the UCSPA and UCPA violates the First Amendment "under the particular circumstances of the case." *Martinez v. City of Rio Rancho*, 197 F. Supp. 3d 1294, 1309 (D.N.M. 2016)*; see also Galbreath v. City of Okla. City*, 568 Fed. Appx. 534, 539 (10th Cir. 2014) (in considering an as-applied challenge, courts "must tether our analysis to the factual context in which the ordinance was applied"). Evaluation of whether claims are barred by Section 230 also requires fact-specific analysis of the conduct at issue and whether the claims "depend on publishing or speaking." *G.G. v. Salesforce.com, Inc.*, 76 F.4th 544, 566 (7th Cir. 2023).

Meta and TikTok raised similar challenges in the civil enforcement actions against them, which shows how the First Amendment and Section 230 applications depend heavily on the specific factual allegations of how the company violated laws. *See Meta*, 2024 WL 3741422; *TikTok I*, 2024 WL 5469059; *TikTok II*, 2025 WL 1125908. Therefore, the first factor is not met, as Snap's challenges are based on future investigations and enforcement actions that may never occur, and adjudication of those challenges would require far more factual development.

Additionally, there is no direct or immediate dilemma between the parties outside of the civil enforcement action already pending in state court. Notably, Snap would have an opportunity to challenge a future pre-suit investigative subpoena, should Defendants initiate

formal investigations against Snap for any additional or separate violations of Utah's consumer protection statutes, and will have the same opportunity as in the current pending action to raise challenges in any future enforcement action. For these reasons, any challenges to potential future investigations or enforcement actions outside of the pending civil enforcement action are not ripe for review and should be dismissed.

C. Alternatively, this Court should stay these proceedings.

If this Court does not dismiss this action, the Court should nevertheless stay this action pending resolution of the state-court action under the *Colorado River* doctrine. "[W]here a federal court would otherwise have concurrent jurisdiction with a state court, the federal court may 'dismiss or stay a federal action in deference to pending parallel state court proceedings.'" *Foxfield Villa Assocs., LLC v. Regnier*, 918 F. Supp. 2d 1192, 1196 (D. Kan. 2013) (quoting *Fox v. Maulding*, 16 F.3d 1079, 1080 (10th Cir. 1994)). The federal court has discretion under *Colorado River* to stay the federal action where there is a pending parallel state court proceeding, and the court decides a stay is warranted for reasons of "wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Id.* at 1196 (quoting *Fox*, 16 F.3d at 1081). Thus, staying these proceedings pending resolution of the state Civil Enforcement Complaint would be warranted if not fully dismissed.

First, this action is parallel to the Civil Enforcement Complaint pending in the Third Judicial District Court as "substantially the same parties" will "litigate substantially the same issues in different forums." *Id.* at 1197. Snap brought this federal action seeking to enjoin the state court litigation under the theory that it violated federal law. (ECF No. 1). These affirmative defenses may be raised equally well in the pending state court litigation. (*See* ECF No. 12 at 4).

Additionally, Snap is the named defendant in the Civil Enforcement Complaint and the state official Defendants are affiliated with the State of Utah and DCP, the Plaintiffs in the state court action. (ECF No. 35). Therefore, the two actions are parallel.

Second, the Court should consider seven factors to determine whether "exceptional circumstances" exist to justify deferring to the parallel state proceeding:

> (1) whether either court has assumed jurisdiction over property; (2) whether the federal forum is inconvenient; (3) the desirability of avoiding piecemeal litigation; (4) the order in which the courts obtained jurisdiction and the progress of the two cases; (5) which forum's substantive law governs the merits of the litigation; (6) the adequacy of the state forum to protect the parties' rights; and (7) the vexatious or reactive nature of either action.

Foxfield Villa Assocs., 918 F. Supp at 1198 (citing *Colorado River*, 424 U.S. at 818). Looking at these factors, a stay would be warranted if dismissal is not granted.

While technically this federal action was filed only eleven days earlier than the state litigation, neither case is further along on the merits. Snap's response to the Civil Enforcement Complaint is due on August 29, 2025. Moreover, the state proceeding would allow for a more fulsome resolution of the dispute between the parties, as the state court could resolve Snap's federal defenses as well as having jurisdiction to resolve the underlying state-law enforcement claims. This Court has already held that the Utah State Court is an adequate forum for which these federal challenges may be raised and decided. (ECF No. 12 at 4). Lastly, the vexatious and clearly "reactive" nature of this action weighs in favor of a stay. Snap's action was filed on June 19, 2025, two days before its right-to-cure period expired and was motivated to create a second forum to frustrate and delay any suit that the State of Utah might have brought in state

court in response to the Attorney General's pre-suit notice. Snap first filed its *ex parte* TRO Motion seeking to prevent the State from filing its lawsuit all together. (ECF No. 5).

The record of this litigation is clear that Snap filed this federal action as a tool to delay the State's enforcement of its consumer protection statutes. This delay seriously prejudices the State and DCP and their objective of protecting Utah's citizens from Snap's deception, unconscionable conduct, and consumer privacy violations. Staying these federal-court proceedings pending resolution of the state court proceeding would promote judicial efficiency, conserve important judicial resources, and promote comprehensive disposition of the litigation between the parties.

For these reasons, the *Colorado River* factors weigh in favor of staying these proceedings should this Court not grant Defendants' Motion to Dismiss.

D. If the Court denies the motion to dismiss and the alternative request for stay, Defendants move for a more definite statement under Rule 12(e).

As discussed, Snap's Complaint only provides vague allegations that the First Amendment and Section 230 would bar Defendants from *any* future investigation or litigation against Snap that "relates" to:

i. Age verification;
ii. Parental consent;
iii. Implementation of other safety features;
iv. Representations, or lack thereof, about the safety and security of Snapchat for its users;
v. Illicit content posted by third parties on Snapchat;
vi. Information generated during user interactions with My AI;
vii. Ephemeral messaging;
viii. Snap's recommendation algorithm; and
ix. Snapstreaks.

(ECF No. 1 at 38–39). None of these challenges are tied to specific violations under the UCSPA or UCPA that DCP and the Attorney General may investigate or enforce. *See e.g.*, Utah Code §§ 13-11-4 (deceptive practices); 13-11-5 (unconscionable practices); 13-61-302 (notice and opt out requirements for processing consumer data). Based on the allegations in Snap's Complaint, it is impossible for Defendants to discern whether Snap is alleging that both the Section 230 and the First Amendment challenges apply to any investigations or enforcement under any law related to any of the above design features of Snapchat, or whether Snap is alleging that enforcement of certain provisions under various laws would be unlawful under one or the other. Without this information, Defendants cannot properly respond to the allegations in the Complaint and are left to imagine any possible combination of features and applicable statutory violations that could possibly be enforced. This list is even more confusing given Plaintiff's preliminary injunction motion that only seeks an injunction of actions related to a very small subset of features listed in the Complaint. (*See* ECF No. 26 at 3–4).

Defendants therefore request that should this Court deny Defendants' motion to dismiss and alternative request for stay, that this Court require Plaintiff to file a more definite Complaint that sets forth the specific violations that Defendants may enforce as related to each of the design features listed in its Complaint and the specific challenges Plaintiff asserts apply to each.

IV. CONCLUSION

For the above reasons, Defendants respectfully request that the Court dismiss the Complaint in its entirety. Alternatively, Defendants request that this case be stayed under the *Colorado River* doctrine or that Plaintiff be ordered to file a more definite Complaint.

Respectfully Submitted,

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