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13
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16
 17 **UNITED STATES DISTRICT COURT FOR THE
 NORTHERN DISTRICT OF CALIFORNIA**

18
 19 DZ Reserve and Cain Maxwell (d/b/a Max
 Martialis) individually and on behalf of others
 20 similarly situated,

21 Plaintiffs,

22 v.

23 FACEBOOK, INC.,

24 Defendant.

Case No.: 3:18-cv-04978

**THIRD AMENDED CONSOLIDATED
 CLASS ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

CLASS ACTION

**REDACTED VERSION OF
 DOCUMENT SOUGHT TO BE
 SEALED**

1 Plaintiffs DZ Reserve and Cain Maxwell (d/b/a Max Martialis), individually and on behalf all
2 others similarly situated, hereby file suit against Facebook, Inc., and allege the following:

3 **INTRODUCTION**

4 1. Facebook, Inc. (“Facebook”) is a social media company that “generate[s] substantially
5 all of [its] revenue from advertising.”¹ In 2017, Facebook earned approximately \$40 billion from
6 advertising revenue.²

7 2. The core of Facebook’s business is its large purported user base, which ostensibly
8 enables advertisements placed on Facebook.com to reach a large number of people. Facebook claims
9 to have 2.13 billion monthly active users globally, with over 240 million monthly active users in the
10 U.S. alone.³

11 3. Before advertisers make a purchase, Facebook represents that their advertisements can
12 potentially reach a specified number of people (“Potential Reach”). Facebook defines “potential reach”
13 as “an estimation of how many people are in an ad set’s target audience.”⁴ Depending on the
14 demographic targeting selected by the advertiser, the Potential Reach is often millions of people.
15 Facebook also represents that the advertisement will reach an estimated number of people per day
16 (“Estimated Daily Reach”). The Estimated Daily Reach is based, in part, on the audience size or
17 Potential Reach. According to Facebook, Estimated Daily Reach “gives you an idea of how many of
18 the people in your target audience [or Potential Reach] you may be able to reach on a given day.”⁵

19 4. These foundational representations are false. Based on publicly available research and
20 Plaintiffs’ own analysis, Facebook overstates the Potential Reach of its advertisements. For example,
21 based on publicly available data, Facebook’s purported Potential Reach among the key 18-34 year-old
22 demographic in every state exceeds the actual population of 18-34 year-olds. Based on a combination
23

24 ¹ Facebook, Inc., Annual Report (Form 10-K) for 2017 Fiscal Year, at 41 (Feb. 1, 2018).

25 ² *Id.*, at 43 (Feb. 1, 2018).

26 ³ See *Facebook’s Ads Manager*, available at <https://www.facebook.com/adsmanager/creation>
(last accessed August 1, 2018)

27 ⁴ See “*About potential Reach*”, available at <https://www.facebook.com/adsmanager/creation>

28 ⁵ See *What are “Potential Reach” and “Estimated Daily Reach?”*, available at
<https://www.facebook.com/business/help/717368264947302/?ref=u2u> (last accessed August 1, 2018)

1 of publicly available research and Plaintiffs' own analysis, among 18-34-year-olds in Chicago, for
2 example, Facebook asserted its Potential Reach was approximately 4 times (400%) higher than the
3 number of real 18-34 year-olds with Facebook accounts in Chicago. Based on a combination of
4 publicly available research and Plaintiffs' own analysis, Facebook's asserted Potential Reach in Kansas
5 City was approximately 200% higher than the number of actual 18-54 year-olds with Facebook
6 accounts in Kansas City. This inflation is apparent in other age categories as well.

7 5. Documents produced by Facebook in this litigation confirm that senior executives at the
8 company knew for years that its Potential Reach metric was inflated – yet they failed to do anything,
9 and even took steps to cover up the problem. As explained below, in late 2017 and throughout 2018,
10 Facebook executives repeatedly acknowledged Potential Reach was inflated and misleading due to,
11 among other reasons, the fact that Potential Reach includes duplicate and fake accounts. Facebook
12 failed to fix the problem, noting that [REDACTED] Yet, as the product
13 manager for Potential Reach put it: [REDACTED]

14 [REDACTED] Facebook's conduct was – and remains – inexcusable. Because Facebook inflated its
15 Potential Reach, Plaintiffs and putative class members purchased more advertisements from Facebook
16 and paid a higher price for advertisements than they otherwise would have. Plaintiffs and putative class
17 members accordingly seek compensation and injunctive relief for violations of California's UCL,
18 breach of the covenant of good faith and fair dealing, fraudulent misrepresentation, fraudulent
19 concealment, and for restitution and punitive damages.

20 JURISDICTION

21 6. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(d)(2)
22 because this is a class action wherein the amount in controversy exceeds the sum or value of
23 \$5,000,000, exclusive of interest and costs, there are more than 100 members in the proposed class,
24 and at least one member of the class of Plaintiffs is a citizen of a state different from a Defendant.

25 7. This Court has personal jurisdiction over Defendant Facebook, Inc., because Facebook,
26 Inc., is headquartered in California, and conducts business in the state of California.

27 8. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) because a substantial part
28 of the events or omissions giving rise to the claims occurred in, were directed to, and/or emanated from

1 this District. Venue is also proper because Facebook’s terms of service require that claims be resolved
2 “exclusively in the U.S. District Court for the Northern District of California or a state court located in
3 San Mateo County....”⁶

4 **PARTIES**

5 9. Plaintiff DZ Reserve is a company incorporated and headquartered in the state of
6 Colorado.

7 10. Plaintiff Cain Maxwell (d/b/a Max Martialis) is a citizen and resident of the state of
8 Ohio.

9 11. Defendant Facebook, Inc., is incorporated in Delaware, and its principal place of
10 business is 1 Hacker Way, Menlo Park, CA 94025.

11 **FACTUAL ALLEGATIONS**

12 12. Facebook is one of the largest social media companies in the world. It owns and operates
13 Facebook.com, as well as Instagram and the WhatsApp Messenger service.

14 13. In 2017, Facebook saw its revenues from online advertisements reach approximately
15 \$40 billion.⁷

16 14. In marketing its online advertisement services, Facebook claims that more than 2 billion
17 people use Facebook every month.⁸ Additionally, in its Ads Manager, Facebook has claimed that 240
18 million of those active users are located in the United States.⁹

19 15. Until approximately March 12, 2019, Facebook’s Potential Reach was based, at least in
20 part, on estimates of the number of people who were active users in the past month.¹⁰ After March 12,
21

22 ⁶ Facebook, *Statement of Rights and Responsibilities*, <https://www.facebook.com/terms> (last
23 accessed: June 17, 2019).

24 ⁷ Facebook, Inc., Annual Report (Form 10-K) for 2017 Fiscal Year, at 41 (Feb. 1, 2018), at 43.

25 ⁸ Facebook, Inc., Annual Report (Form 10-K) for 2017 Fiscal Year, at 41 (Feb. 1, 2018), at 34.

26 ⁹ *See Facebook’s Ads Manager*, available at <https://www.facebook.com/adsmanager/creation>
(last accessed August 1, 2018).

27 ¹⁰ *See Updates to Potential Reach*, available at
28 https://www.facebook.com/business/help/567031670465069?helpref=faq_content (last accessed June
14, 2019)

1 2019, Potential Reach is based, at least in part, on how many people have been shown an ad on a
2 Facebook Product in the past 30 days who match the respective advertiser’s desired audience and
3 placement criteria.¹¹

4 16. Facebook defines a Monthly Active User (MAU) as a “registered Facebook user who
5 logged in and visited Facebook through [Facebook’s] website or a mobile device, or used [Facebook’s]
6 Messenger application (and is also a registered Facebook user), in the last 30 days as of the date of
7 measurement. MAUs are a measure of the size of our global active user community.”¹²

8 17. Audience size is an important factor when advertisers determine where to spend
9 marketing dollars. Indeed, Potential Reach and Estimated Daily Reach are the only information
10 Facebook provides to advertisers regarding the anticipated performance of the ad campaign prior
11 purchasing an advertisement. Moreover, user inflation can skew an advertiser’s decision making,
12 which is frequently based on the anticipated reach of the advertising campaign, or “Potential Reach.”¹³

13 18. Reach inflation can have “real consequences for an advertiser’s overall communications
14 plain.”¹⁴ For advertisers, “Facebook Ads Manager functions as a tool for an advertiser to plan, budget,
15 buy and optimize their own campaigns across Facebook platforms.”¹⁵

16 19. Facebook’s large purported potential reach is widely acknowledged as one of the main
17 reasons that advertisers choose to purchase advertisements from Facebook.

18 20. For example, an online advertising commentator recently noted that the large number of
19 people that can potentially be reached on Facebook is one of the four “reasons why you can’t ignore
20 Facebook advertising.”¹⁶

21
22 ¹¹ *Id.*

23 ¹² Facebook, Inc., Annual Report (Form 10-K) for 2017 Fiscal Year, at 41 (Feb. 1, 2018), at 36

24 ¹³ “Facebook Audience Inflation a Global Issue-Ad News Study”, AdNews (September 8, 2017)
25 available at <http://www.adnews.com.au/news/facebook-audience-inflation-a-global-issue-adnews-study>
(visited July 16, 2018).

26 ¹⁴ Video Advertising Bureau, “Facebook’s Reach (on Reach), Miscalculations in the Age of
27 Precision”, p. 19, September 2017, available at <https://www.thevab.com/wp-content/uploads/2017/09/Facebooks-Reach.pdf> (accessed August 6, 2018).

28 ¹⁵ *Id.*

¹⁶ “4 Reasons Why You Can’t Ignore Facebook Advertising,” InstaPage (September 10, 2018)

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