UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

REVEAL CHAT HOLDCO, LLC., et al.,

Plaintiffs,

v.

FACEBOOK, INC.,

Defendant.

Case No. 20-cv-00363-BLF

ORDER GRANTING DEFENDANT FACEBOOK, INC.'S MOTION TO DISMISS

[Re: ECF 25]

This is a putative class action antitrust lawsuit brought by Plaintiffs Reveal Chat Holdco LLC ("Reveal Chat"), USA Technology and Management Services, Inc. ("Lenddo"), Cir.cl, Inc. ("Cir.cl"), and Beehive Biometric, Inc. ("Beehive Biometric") (collectively, "Plaintiffs") against Defendant Facebook, Inc. ("Facebook"). Before the Court is Facebook's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) on the grounds that Plaintiffs' claims are time-barred, Plaintiffs have not suffered an antitrust injury, Plaintiffs have failed to allege plausible product markets, and Plaintiffs have otherwise failed to state a claim upon which relief can be granted. Mot. to Dismiss ("Mot.") 1, ECF 25. Plaintiffs oppose. *See* Opp. to Mot. ("Opp."), ECF 43. The Court heard oral argument on this motion on June 11, 2020. For the reasons stated below and on the record, the Court GRANTS Facebook's motion and DISMISSES WITH LEAVE TO AMEND IN PART and DISMISSES WITHOUT LEAVE TO AMEND IN PART the Complaint.

I. BACKGROUND[1]

Facebook is a publicly-traded social media company that was founded in 2004 by Mark Zuckerberg. Class Action Compl. ("Compl.") ¶¶ 26-26, 35, ECF 1. Facebook provides online

[1] Plaintiffs' well-pled factual allegations are accepted as true for purposes of the motion to

services to two billion users worldwide and in exchange it collects user data, which its uses to create and sell advertising services. Compl. ¶ 27. Additionally, Facebook operates as a platform for third-party applications and hardware. Compl. ¶ 28. Between 2004 and 2010, Facebook emerged as "the dominant social network in the United States." Compl. ¶ 36.

The data that Facebook collects from users includes: information shared on personal pages, photos and profiles viewed, connections to others, things shared with others, and the content of messages to other users. Compl. ¶ 46. This data can be used for targeted advertising, and the social data created by Facebook's network can be monetized in a number of ways from targeted advertising and machine learning to commercializing access so that data can be mined by third parties. Compl. ¶¶ 47-49. "By 2010, Facebook stood alone as the dominant player in the newly emergent market for social data (the 'Social Data Market') – a market in which Facebook's own users provided Facebook with a constant stream of uniquely valuable information, which Facebook in turn monetized through the sale of social data (for example, through advertising, monetizing [Application Programming Interfaces ("APIs")], or other forms of commercializing access to Facebook's network)." Compl. ¶ 50.

Because user data made Facebook's network more valuable and thus attracted more customers which then led to more data and more customers, a feedback loop emerged. Compl. ¶¶ 52-54. The feedback loop, in turn, created a barrier to entry because competing with Facebook required "a new entrant . . . to rapidly replicate both the breadth and value of the Facebook network." Compl. ¶ 55. This barrier to entry also allowed Facebook to control and increase prices in the Social Data and Social Advertising Markets without the pressures of price competition from existing competitors or new entrants. Compl. ¶ 56; *see* Compl. ¶¶ 57-60.

In 2012, Facebook coined the term "Open Graph" "to describe a set of tools developers could use to traverse Facebook's network of users, including the social data that resulted from user engagement." Compl. ¶¶ 90-92. Open Graph contained a set of APIs, which "allowed those creating their own social applications to query the Facebook network for information." Compl. ¶ 92. Beginning in the fall of 2011, to address the threat posed by mobile applications, Facebook devised a scheme to attract third-party developers to build for their platform and then remove

access to the APIs that were central to these applications. Compl. ¶ 117. For example, the "Friends API" allowed third-party developers to search through a user's friends, as well as their friends of friends, and the "Newsfeed API" allowed third-party developers to search a user's newsfeed. Compl. ¶¶ 117-19. Without access to this data, third-party applications "would be abruptly left with none of the social data they needed to function." Compl. ¶ 119. By August 2012, Facebook planned to prevent competitive third-party applications from buying social data from Facebook. Compl. ¶¶ 120-21. Facebook even identified direct, horizontal competitors in the Social Data and Social Advertising Markets. Compl. ¶ 128. In November 2012, Facebook announced that it would block competitors or require full data reciprocity for continued access to its data. Compl. ¶ 136.

In April 2014, Facebook announced that it would remove access to several rarely used APIs, including the Friend and Newsfeed APIs. Compl. ¶ 202. After this announcement and through the full removal of the APIs in April 2015, Facebook entered into Whitelist and Data Sharing Agreements with certain third-party developers that allowed continued access to the Friends or NewsFeed APIs and included a provision acknowledging that the covered APIs were not available to the general public. Compl. ¶¶ 207-08. These agreements "were only offered in exchange for massive purchases of Facebook's social data through mobile advertising and/or through the provision of the developer's own social data back to Facebook (so-called 'reciprocity')." Compl. ¶ 209.

In 2012, Facebook acquired its competitor, Instagram for $1 billion. Compl. ¶ 260. The acquisition of "Instagram was instrumental to Facebook's explosive growth in the Social Data and Social Advertising Markets." Compl. ¶ 270. In 2014, Facebook acquired another competitor, WhatsApp, for $22 billion. Compl. ¶ 290. The acquisition of WhatsApp "further solidified Facebook's dominance in the Social Data and Social Advertising Markets." Compl. ¶ 292. Facebook is currently integrating the backends of its products with WhatsApp and Instagram. Compl. ¶ 294.

Based on the above actions, Plaintiffs filed their Class Action Complaint on January 16, 2020. The complaint alleges six causes of action for: (1) monopolization in violation of Section 2

of the Sherman Antitrust Act (the "Sherman Act"), 15 U.S.C. § 2, for acquiring and maintaining a monopoly in the relevant markets for Social Data and Social Advertising; (2) violation of Section 2 of the Sherman Act for attempting to monopolize the Social Data and Social Advertising Markets; (3) violation of Section 1 of the Sherman Act under a hub-and-spoke theory because Facebook's Whitelist and Data Sharing Agreements controlled the supply of social data; (4) violation of Section 7 of the Clayton Antitrust Act (the "Clayton Act"), 15 U.S.C. § 18, for Facebook's acquisition and integration of Instagram and WhatsApp; (5) violation of Section 2 of the Sherman Act because Facebook acquired and maintained a monopoly in the Social Data and Social Advertising Markets through its acquisition and integration of Instagram and WhatsApp; and (6) a request for injunctive relief and divestiture. Compl. ¶¶ 403-51.

II. LEGAL STANDARD

"A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted 'tests the legal sufficiency of a claim.'" *Conservation Force v. Salazar*, 646 F.3d 1240, 1241-42 (9th Cir. 2011) (quoting *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)). When determining whether a claim has been stated, the Court accepts as true all well-pled factual allegations and construes them in the light most favorable to the plaintiff. *Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d 681, 690 (9th Cir. 2011). However, the Court need not "accept as true allegations that contradict matters properly subject to judicial notice" or "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (internal quotation marks and citations omitted). While a complaint need not contain detailed factual allegations, it "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when it "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* On a motion to dismiss, the Court's review is limited to the face of the complaint and matters judicially noticeable. *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986); *N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983).

In deciding whether to grant leave to amend, the Court must consider the factors set forth by the Supreme Court in *Foman v. Davis*, 371 U.S. 178 (1962), and discussed at length by the Ninth Circuit in *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048 (9th Cir. 2009). A district court ordinarily must grant leave to amend unless one or more of the *Foman* factors is present: (1) undue delay, (2) bad faith or dilatory motive, (3) repeated failure to cure deficiencies by amendment, (4) undue prejudice to the opposing party, or (5) futility of amendment. *Eminence Capital*, 316 F.3d at 1052. "[I]t is the consideration of prejudice to the opposing party that carries the greatest weight." *Id.* However, a strong showing with respect to one of the other factors may warrant denial of leave to amend. *Id.*

III. DISCUSSION

Facebook argues that Plaintiffs' claims are time-barred, Plaintiffs failed to plausibly allege an antitrust injury, and Plaintiffs failed to state a claim for relief. Mot. 6-25. The Court addresses each argument in turn.

A. Statute of Limitations and Doctrine of Laches

Facebook argues that Plaintiffs' claims for damages are barred by the four-year statute of limitations and Plaintiffs' requests for injunctive relief are precluded by the doctrine of laches. Mot. 6-10. Specifically, as to Plaintiffs' damages claims, Facebook argues that the statute of limitations for antitrust claims runs from the commission of an act that injures the plaintiff. Mot. 6. Facebook argues that Plaintiffs challenge four independent acts: the acquisition of Instagram in April 2012; the acquisition of WhatsApp in February 2014; the Whitelist and Data Sharing Agreements between April 2014 and April 2015; and Facebook's April 2015 modification of its API policy. Mot. 6. Accordingly, because these acts occurred five to eight years before the Complaint was filed, Facebook argues that the statute of limitations has run. Mot. 6. For similar reasons, Facebook argues that Plaintiffs' request for injunctive relief is barred by the doctrine of laches because Plaintiffs' years-long delay in bringing the action was inexcusable as each challenged act was highly publicized and because Facebook was prejudiced by the unreasonable delay. Mot. 7-8. Moreover, Facebook argues that fraudulent concealment does not toll the

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