

1 SONAL N. MEHTA (SBN 222086)

Sonal.Mehta@wilmerhale.com

2 WILMER CUTLER PICKERING

HALE AND DORR LLP

3 2600 El Camino Real, Suite 400

Palo Alto, California 94306

4 Telephone: (650) 858-6000

Facsimile: (650) 858-6100

5 DAVID Z. GRINGER (*pro hac vice*)

David.Gringer@wilmerhale.com

6 ARI HOLTZBLATT (*pro hac vice*)

Ari.Holtzblatt@wilmerhale.com

7 MOLLY M. JENNINGS (*pro hac vice*)

Molly.Jennings@wilmerhale.com

8 WILMER CUTLER PICKERING

9 HALE AND DORR LLP

10 1875 Pennsylvania Avenue, NW

Washington, DC 20006

11 Telephone: (202) 663-6000

12 Facsimile: (202) 663-6363

13 *Attorneys for Defendant*

FACEBOOK, INC.

14
15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN JOSE DIVISION**

18 REVEAL CHAT HOLDCO, LLC, a Delaware
19 limited liability company, USA TECHNOLOGY
20 AND MANAGEMENT SERVICES, INC. (d/b/a
Lenddo USA), a Delaware corporation, and
BEEHIVE BIOMETRIC, INC., a dissolved
Delaware corporation,

21 Plaintiffs,

22 v.

23 FACEBOOK, INC., a Delaware corporation,

24 Defendant.

Case No. 5:20-cv-00363-BLF

**DEFENDANT FACEBOOK, INC.'S
NOTICE OF MOTION AND
MOTION TO DISMISS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
THEREOF**

Hearing Date: December 3, 2020

Time: 9:00am

Judge: Hon. Beth Labson Freeman

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Page
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
BACKGROUND	3
ARGUMENT	4
I. Plaintiffs’ Claims Remain Time-Barred	4
A. Plaintiffs’ Claims Accrued No Later Than April 2015.....	4
B. The Doctrine Of Fraudulent Concealment Does Not Apply	5
1. The Fraudulent Concealment Doctrine Does Not Apply.....	5
2. Plaintiffs Have Not Adequately Pled Fraudulent Concealment	6
II. Plaintiffs Have Not Plausibly Alleged Antitrust Injury	11
A. Plaintiffs Did Not Suffer Antitrust Injury In The “Social Data” Market.....	12
1. Plaintiffs Did Not Suffer Antitrust Injury As Competitors In Social Data.....	13
2. Plaintiffs Did Not Suffer Antitrust Injury As Customers In Social Data	16
B. Plaintiffs Did Not Suffer Antitrust Injury In The “Social Advertising” Market	18
III. The FAC Does Not State A Section 2 Claim.....	19
A. Plaintiffs Have Not Plausibly Alleged Exclusionary Conduct	19
1. Facebook’s Purported “Scheme” Was Not Plausibly Exclusionary	19
2. Facebook Did Not Have A Duty To Deal With Plaintiffs.....	20
B. Facebook Does Not Have Monopoly Power	23
CONCLUSION	25

TABLE OF AUTHORITIES

Page(s)

CASES

American Professional Testing Service, Inc. v. Harcourt Brace Jovanovich Legal & Professional Publications, Inc.,
108 F.3d 1147 (9th Cir. 1997)17

Aspen Skiing Co. v. Aspen Highlands Skiing Corp.,
472 U.S. 585 (1985).....20, 21, 22

Associated General Contractors of California v. California State Council of Carpenters,
459 U.S. 519 (1983).....18

Bell Atlantic Corp. v. Twombly,
550 U.S. 544 (2007).....19, 22

Bourns, Inc. v. Raychem Corp.,
331 F.3d 704 (9th Cir. 2003)15, 18

Brantley v. NBC Universal, Inc.,
675 F.3d 1192 (9th Cir. 2012)17

Cascade Health Solutions v. PeaceHealth,
515 F.3d 883 (9th Cir. 2008)19

Christy Sports, LLC v. Deer Valley Resort Co.,
555 F.3d 1188 (10th Cir. 2009)21, 22

Conmar Corp. v. Mitsui & Co. (U.S.A.), Inc.,
858 F.2d 499 (9th Cir. 1988)7, 11

DeHoog v. Anheuser-Busch InBev SA/NV,
899 F.3d 758 (9th Cir. 2018)12

Dimidowich v. Bell & Howell,
803 F.2d 1473 (9th Cir. 1986)20

Distance Learning Co. v. Maynard,
2020 WL 2995529 (N.D. Cal. June 4, 2020)24

Facebook, Inc. v. Power Ventures, Inc.,
2010 WL 3291750 (N.D. Cal. July 20, 2010).....22

Feitelson v. Google Inc.,
80 F. Supp. 3d 1019 (N.D. Cal. 2015)4, 13, 15, 16

Foremost Pro Color, Inc. v. Eastman Kodak Co.,
702 F.2d 524 (9th Cir. 1982)22

1 *Federal Trade Commission v. Qualcomm Inc.*,
 969 F.3d 974 (9th Cir. 2020) *passim*

2 *Garrison v. Oracle Corp.*,
 3 159 F. Supp. 3d 1044 (N.D. Cal. 2015)7, 11

4 *GO Computer, Inc. v. Microsoft Corp.*,
 5 508 F.3d 170 (4th Cir. 2017)10

6 *Hexcel Corp. v. Ineos Polymers, Inc.*,
 681 F.3d 1055 (9th Cir. 2012)5, 6, 10

7 *Hicks v. PGA Tour, Inc.*,
 8 897 F.3d 1109 (9th Cir. 2018)4, 20

9 *Hunt-Wesson Foods, Inc. v. Ragu Foods, Inc.*,
 10 627 F.2d 919 (9th Cir. 1980)24, 25

11 *Image Technical Services, Inc. v. Eastman Kodak Co.*,
 125 F.3d 1195 (9th Cir. 1997)24

12 *In re Animation Workers Antitrust Litigation*,
 13 123 F. Supp. 3d 1175 (N.D. Cal. 2015)8, 10

14 *In re Ciprofloxacin Hydrochloride Antitrust Litigation*,
 261 F. Supp. 2d 188 (E.D.N.Y. 2003)6

15 *In re Dual-Deck Video Cassette Recorder Antitrust Litigation*,
 16 11 F.3d 1460 (9th Cir. 1993)14

17 *In re Glumetza Antitrust Litigation*,
 18 ___ F. Supp. 3d ___, 2020 WL 1066934 (N.D. Cal. Mar. 5, 2020)8

19 *In re Lithium Ion Batteries Antitrust Litigation*,
 20 2014 WL 4955377 (N.D. Cal. Oct. 2, 2014).....14

21 *In re National Football League’s Sunday Ticket Antitrust Litigation*,
 933 F.3d 1136 (9th Cir. 2019)23

22 *In re Webkinz Antitrust Litigation*,
 23 695 F. Supp. 2d 987 (N.D. Cal. 2010)16

24 *Liveuniverse, Inc. v. Myspace, Inc.*,
 25 2007 WL 6865852 (C.D. Cal. June 4, 2007), *aff’d* 304 F. App’x 554 (9th Cir.
 2008)21

26 *Lucas Automotive Engineering Inc. v. Bridgestone/Firestone, Inc.*,
 140 F.3d 1228 (9th Cir. 1998)17

27 *MetroNet Services Corp. v. Qwest Corp.*,

1 *Movielcolor Ltd. v. Eastman Kodak Co.*,
288 F.2d 80 (2d Cir. 1961).....6

2 *Novation Ventures, LLC v. J.G. Wentworth Company, LLC*,
3 156 F. Supp. 3d 1094 (C.D. Cal. 2015)17

4 *Novell, Inc. v. Microsoft Corp.*,
5 731 F.3d 1064 (10th Cir. 2013)22

6 *NYNEX Corp. v. Discon, Inc.*,
7 525 U.S. 128 (1998).....16

8 *Ohio v. American Express Co.*,
138 S. Ct. 2274 (2018).....20

9 *Pace Industries, Inc. v. Three Phoenix Co.*,
10 813 F.2d 234 (9th Cir. 1987)4

11 *Pacific Bell Telephone Co. v. Linkline Communications, Inc.*,
12 555 U.S. 438 (2009).....20

13 *Paladin Associates, Inc. v. Montana Power Co.*,
14 328 F.3d 1145 (9th Cir. 2003)13, 16

15 *Peralta v. California Franchise Tax Board*,
16 124 F. Supp. 3d 993 (N.D. Cal. 2015)9

17 *Pincay v. Andrews*,
18 238 F.3d 1106 (9th Cir. 2001)6

19 *Pocahontas Supreme Coal Co. v. Bethlehem Steel Corp.*,
20 828 F.2d 211 (4th Cir. 1987)11

21 *Rebel Oil Co. v. Atlantic Richfield Co.*,
22 51 F.3d 1421 (9th Cir. 1995)12, 23, 25

23 *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*,
24 442 F.3d 741 (9th Cir. 2006)8

25 *Rheumatology Diagnostics Laboratory, Inc. v. Aetna, Inc.*,
26 2013 WL 3242245 (N.D. Cal. June 25, 2013).....25

27 *Rutledge v. Boston Woven Hose & Rubber Co.*,
28 576 F.2d 248 (9th Cir. 1978)7

29 *Ryan v. Microsoft Corp.*,
30 147 F. Supp. 3d 868 (N.D. Cal. 2015)10, 11

Sambreel Holdings LLC v. Facebook, Inc.,
906 F. Supp. 2d 1070 (S.D. Cal. 2012).....22

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.