

United States District Court
Northern District of California

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

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DAWN DANGAARD, KELLY GILBERT,
and JENNIFER ALLBAUGH,

Plaintiffs,

v.

INSTAGRAM, LLC, FACEBOOK
OPERATIONS, LLC, FENIX INTERNET,
LLC, FENIX INTERNATIONAL, LTD.,
META PLATFORMS, INC., LEONID
RADVINSKY, and JOHN DOES 1–10.

Defendants.

No. C 22-01101 WHA

ORDER RE MOTIONS TO DISMISS

INTRODUCTION

In this diversity and putative class action, plaintiffs claim that defendants remain engaged in unfair competition and tortious interference with contracts and business relationships. Defendants have filed two separate motions to dismiss. For the reasons that follow, the motions are **DENIED**.

STATEMENT

Plaintiffs Dawn Dangaard, Kelly Gilbert, and Jennifer Allbaugh are adult entertainment performers who use social media to promote themselves. Plaintiffs place (or “post”) links on social media to adult entertainment websites. Those websites allow users to watch plaintiffs’ content for a price. Plaintiffs split the revenue with the website owners. Of importance here,

1 Defendant Meta Platforms, Inc., owns and operates defendants Instagram, LLC, and
2 Facebook, LLC (collectively, “Meta defendants”), who operate Instagram and Facebook.
3 John Does One through Ten were employees of Meta defendants when the claims arose.
4 Defendants Fenix International, Ltd., Fenix Internet, LLC, and Leonid Radvinsky (collectively,
5 “Fenix defendants”) are associated with OnlyFans. Defendant Radvinsky owns defendant
6 Fenix International, which operates OnlyFans. Defendant Fenix International owns defendant
7 Fenix Internet — which receives payments from users of OnlyFans and distributes those
8 payments to OnlyFans content creators.

9 Plaintiffs make the following allegations. Fenix defendants paid Doe defendants to
10 demote or delete plaintiffs’ accounts and posts on Instagram and Facebook. That conduct
11 reduced internet traffic to adult entertainment websites with which plaintiffs contract —
12 websites that compete with OnlyFans. Defendants’ actions, thereby, reduced plaintiffs’
13 viewership on adult entertainment platforms and plaintiffs’ revenue from adult content.
14 Defendants’ actions increased internet traffic to OnlyFans and swelled its revenues.

15 Plaintiffs, moreover, allege that Doe defendants demoted or deleted plaintiffs’ accounts
16 and posts in a particular way. They allege Doe defendants caused such demotion or removal
17 by manipulating Facebook and Instagram databases to include plaintiffs in lists of “dangerous
18 individuals or organizations.” Such lists identify terrorists, and Facebook and Instagram’s
19 algorithms use those lists to demote or remove terrorist content. Plaintiffs refer to this conduct
20 as “blacklisting.”

21 Additionally, plaintiffs allege Meta defendants share their lists of terrorists with other
22 social media platforms via the “Global Internet Forum to Counter Terrorism Shared Hash
23 Database.” For that reason, plaintiffs allege their content was also demoted or removed from
24 other social media platforms.

25 Plaintiffs contend Doe defendants’ actions constitute unfair competition and tortious
26 interference with plaintiffs’ contracts and business relationships (with competitors of
27 OnlyFans). Plaintiffs seek to hold Meta defendants vicariously liable for the actions of Doe
28

1 defendants. And, plaintiffs contend Fenix defendants are liable under a theory of
2 civil conspiracy.

3 Previously, Meta defendants moved to dismiss all claims under FRCP 12(b)(6) and
4 California's anti-SLAPP statute. Fenix defendants moved to dismiss all claims under
5 FRCP 12(b)(2), FRCP 9(b), and on other grounds. At the hearing on the motions on
6 September 8, 2022, plaintiffs revealed that they had the benefit of information outside the
7 pleadings that may support their claims. For that reason, the district court ordered plaintiffs to
8 file a second amended complaint, pleading as much cure as possible. The district court ordered
9 defendants to re-brief their motions based on the new complaint. Fenix defendants'
10 FRCP 12(b)(2) motion, however, was held in abeyance pending jurisdictional discovery.

11 Now, all defendants move to dismiss the second amended complaint under
12 FRCP 12(b)(6). Meta defendants again move to strike the claims under California's anti-
13 SLAPP statute. Fenix defendants have not revived their FRCP 9(b) motion. This order
14 follows full briefing and oral argument.

15 ANALYSIS

16 1. PLAINTIFFS' CLAIMS ARE PLAUSIBLE.

17 To survive a motion to dismiss:

18 a complaint must contain sufficient factual matter, accepted as
19 true, to "state a claim to relief that is plausible on its face."
20 A claim has facial plausibility when the plaintiff pleads factual
21 content that allows the court to draw the reasonable inference that
22 the defendant is liable for the misconduct alleged. The plausibility
23 standard is not akin to a "probability requirement," but it asks for
24 more than a sheer possibility that a defendant has acted unlawfully.
25 Where a complaint pleads facts that are "merely consistent with" a
26 defendant's liability, it "stops short of the line between possibility
27 and plausibility of 'entitlement to relief.'"

28 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
556–57, 570 (2007)).

29 Here, plaintiffs' allegations are sufficient to state plausible claims for relief. *First*,
30 plaintiffs provide an email that purports to show several wire transfers from Fenix defendants

1 accounts, account numbers, and physical addresses. It describes a wire transfer from a Fenix
2 International account (in the United Kingdom, where Fenix is headquartered and incorporated)
3 to an intermediary Fenix bank account (in Hong Kong, where Fenix is also incorporated),
4 “Smart Team International.” Underneath that information, it lists the names of several adult
5 entertainment websites that compete with OnlyFans. Plaintiffs allege that the list is a “memo”
6 line, indicating the purpose of the wire transfer. Thereafter, the email details several wire
7 transfers from the Smart Team intermediary account to the trust accounts of three employees of
8 Meta defendants (in the Philippines).

9 Taking the above facts as true, it is reasonable to infer that the money sent from the Fenix
10 International account to the Smart Team intermediary account in October 2018 bore a
11 relationship to the adult entertainment websites listed in the memo line — websites that
12 compete with OnlyFans. Moreover, a wire transfer from the Smart Team intermediary account
13 to one of Meta defendants’ employees occurred on the same day as the initial transfer to the
14 intermediary account, so it is reasonable to infer that some of the money related to the adult
15 entertainment websites benefited that employee. This supports plaintiffs’ allegation that Meta
16 defendants’ employees accepted bribes from Fenix defendants in late 2018 to blacklist
17 competitors of OnlyFans.

18 *Second*, plaintiffs allege that, starting in late 2018, competitors of OnlyFans experienced
19 significant drops in web traffic while OnlyFans experienced a significant increase in traffic.
20 The complaint contains graphs depicting such changes in traffic for OnlyFans and numerous
21 competitors of OnlyFans (Second Amd. Compl. ¶¶ 94–96 and Exh. B at 31–32). And, a news
22 article incorporated into the complaint states that over 100 Instagram accounts that drove
23 traffic to a competitor of OnlyFans experienced content take downs in late 2018 (*id.*, Exh. A).
24 Coupled with the email above, these facts are strong support for plaintiffs’ allegations.

25 *Third*, plaintiffs’ second amended complaint refers to a Facebook whistleblower report
26 that corroborates the claims. Plaintiffs did not append the report to the complaint because they
27 did not receive it until after they opposed defendants’ motions. Plaintiffs submitted the report

1 (and a related news article) and filed an administrative motion to supplement the complaint on
2 the due date for defendants' reply briefs.

3 Nevertheless, this order treats plaintiffs' motion as a motion for leave to amend under
4 FRCP 15(a)(2), which provides that "[t]he [district] court should freely give leave when justice
5 so requires." "District courts generally consider four factors in determining whether to deny a
6 motion to amend: 'bad faith, undue delay, prejudice to the opposing party, and the futility of
7 amendment.'" *In re Korean Air Lines Co., Ltd.*, 642 F.3d 685, 701 (9th Cir. 2011) (citation
8 omitted).

9 Here, amendment would not be futile because the whistleblower report supports
10 plaintiffs' claims. Specifically, an anonymous Facebook employee posted the report on a
11 Facebook-owned website (albeit a public website) specifically designated to receive
12 whistleblower reports. The report states that "[c]ertain employees are taking bribes to protect
13 OnlyFans on [Facebook]." "They have taken down every OnlyFans competitor" "[T]he
14 early stages used the GIFCT database" The scheme "beg[an] in [the] summer of 2018,"
15 and the employee "observed it" in the United Kingdom (Dkt. No. 89, Exh. L).

16 All of these statements corroborate plaintiffs' allegations. Furthermore, at least Meta
17 defendants have had access to the report since its posting, so it is hard to believe Meta
18 defendants are surprised by the information. Thus, the whistleblower report (and the related
19 news article) shall be added to the complaint.

20 *Fourth*, plaintiffs have sufficiently pled damages. All of plaintiffs state that they have
21 experienced decreases in revenue since the alleged conduct began. And, one of plaintiffs
22 alleges that her annual revenue decreased by \$13,000 from 2020 to 2021.

23 *Fifth*, plaintiffs have pled actionable harm to competition. Specifically, rather than plead
24 "[i]njury to an individual plaintiff," plaintiffs have pled that defendants' actions have had
25 "some anticompetitive effect in the larger, interbrand [adult entertainment] market." *Marsh*
26 *v. Anesthesia Servs. Med. Grp., Inc.*, 200 Cal. App. 4th 480, 495 (2011) (citation omitted).

27 *Sixth*, plaintiffs' claims against defendant Radvinsky are plausible. Plaintiffs allege that
28 defendant Radvinsky is the sole owner of Fenix International, Fenix Internet, and OnlyFans

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.