

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

SHARED.COM,
Plaintiff,
v.
META PLATFORMS, INC.,
Defendant.

Case No. [22-cv-02366-RS](#)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT’S
MOTION TO DISMISS FIRST
AMENDED COMPLAINT**

I. INTRODUCTION

Plaintiff Shared.com (“Shared”) is an online content creator that was, for many years, deeply engaged in the Facebook advertising ecosystem. This suit arose following a series of alleged incidents that effectively barred Shared from using, advertising on, and monetizing from the social media platform. The operative First Amended Complaint (“FAC”) avers breach of contract, misrepresentation, and several other acts of misconduct by Defendant Meta Platforms, Inc. (“Meta”). Meta now moves to dismiss the FAC for failure to state a claim.

The motion is granted in part and denied in part. Some of Plaintiff’s claims are barred by section 230(c)(1) of the Communications Decency Act. The remaining claims, however, have been adequately pleaded.

II. BACKGROUND¹

¹ As this Court must “accept all factual allegations in the complaint as true” when evaluating a

1 Shared is a partnership based out of Ontario, Canada that “creates and publishes original,
2 timely, and entertaining [online] content.” Dkt. 21 ¶ 9. In addition to its own website, Plaintiff also
3 operated a series of Facebook pages from 2006 to 2020. During this period, Shared avers that its
4 pages amassed approximately 25 million Facebook followers, helped in part by its substantial
5 engagement with Facebook’s “advertising ecosystem.” This engagement occurred in two ways.
6 First, Shared directly purchased “self-serve ads,” which helped drive traffic to Shared.com and
7 Shared’s Facebook pages. Second, Shared participated in a monetization program called “Instant
8 Articles,” in which articles from Shared.com would be embedded into and operate within the
9 Facebook news feed; Facebook would then embed ads from other businesses into those articles
10 and give Shared a portion of the ad revenue. Shared “invested heavily in content creation” and
11 retained personnel and software specifically to help it maximize its impact on the social media
12 platform. *Id.* ¶ 19.

13 Friction between Shared and Facebook began in 2018. Shared states that it lost access to
14 Instant Articles on at least three occasions between April and November of that year. Importantly,
15 Shared received no advance notice that it would lose access. This was contrary to Shared’s averred
16 understanding of the Facebook Audience Network Terms (“the FAN Terms”), which provide that
17 “[Facebook] may change, withdraw, or discontinue [access to Instant Articles] in its sole
18 discretion and [Facebook] will use good faith efforts to provide Publisher with notice of the
19 same.” *Id.* ¶ 22; *accord* Dkt. 21-5. Shared asserts that “notice,” as provided in the FAN Terms,
20 obliges Facebook to provide *advance* notice of a forthcoming loss of access, rather than after-the-
21 fact notice.

22 During this same timeframe, Facebook also failed to make a timely payment from Instant
23 Articles ad revenue. Another clause in the FAN Terms (“the FAN payment term”) provides that
24 Facebook would forward money earned through Instant Articles “approximately 21 days
25 following the end of the calendar month in which the transaction occurred.” Dkt. 21 ¶ 26; *accord*

26 _____
27 in this section are taken from the FAC, unless otherwise noted.

1 Dkt. 21-5. Facebook delayed paying Shared its portion of April 2018 ad revenue until September
2 2018, roughly four months beyond the timeframe noted in the FAN payment term. This delay led
3 to a critical shortage in Shared’s operating capital, ultimately resulting in its decision to lay off
4 eighteen employees.

5 Meanwhile, all was not well with Shared’s self-serve ad buys. Shared notes that, “[o]ver
6 the course of its relationship with Facebook, Shared had numerous ads arbitrarily and incorrectly
7 rejected without explanation.” Dkt. 21 ¶ 47. Facebook’s Advertising Policies, which governed the
8 self-serve ad program, had provided that if an ad was rejected, Facebook would send the publisher
9 “an email with details that explain why. Using the information in [the] disapproval email, you can
10 edit your ad and create a compliant one.” *Id.* ¶ 45; *accord* Dkt. 21-4, at 2. Shared expected to
11 receive specific explanations when its ads were rejected, but each time it instead received a
12 “circular” explanation simply stating that the ad had been rejected for failing to comply with the
13 Advertising Policies. Dkt. 21 ¶ 102.

14 All of these tensions were brought to a head in October 2020 when Facebook “unpublished
15 the Shared Facebook pages, suspended Shared’s ability to advertise,” and disabled Shared’s ad
16 accounts as well as the personal Facebook profiles of several Shared employees. *Id.* ¶ 42. While
17 the Facebook Terms of Service stated that accounts could be suspended only after “clearly,
18 seriously or repeatedly” breaching Facebook’s policies, *id.* ¶ 49, Shared states that, to its
19 knowledge, it had not violated any such policies. These actions “effectively gave Shared a death
20 sentence within the Facebook system,” resulting in its business and its multimillion-dollar
21 valuation “cratering.” *Id.* ¶¶ 43, 51.

22 Shared sued Meta, Facebook’s parent company, in July 2022. The FAC raises six claims
23 for relief, some of which have multiple factual bases. First, Shared avers that Meta committed
24 conversion (Claim 1), breach of contract (Claim 3), and breach of the implied covenant of good
25 faith and fair dealing (Claim 4) in suspending access to Shared’s Facebook pages, contrary to the
26 Facebook Terms of Service. Second, Shared avers that Meta committed breach of contract (Claim
27 3), breach of the implied covenant of good faith and fair dealing (Claim 4), and intentional

1 misrepresentation (Claim 5) or negligent misrepresentation (Claim 6) for failing to provide
2 advance notice of suspension from Instant Articles, contrary to the FAN Terms. Third, Shared
3 avers that Meta committed breach of contract (Claim 3), intentional misrepresentation (Claim 5) or
4 negligent misrepresentation (Claim 6), and violated California’s Unfair Competition Law (“UCL”)
5 (Claim 2), *see* Cal. Bus. & Prof. Cod § 17200, for failing to provide sufficient details regarding ad
6 rejections in violation of the Advertising Policies. Fourth, Shared avers that Meta committed
7 breach of contract (Claim 3) for failing to deliver the April 2018 payment on time in violation of
8 the FAN payment term. Meta now moves to dismiss the FAC in its entirety.

9 III. LEGAL STANDARD

10 Federal Rule of Civil Procedure 12(b)(6) governs motions to dismiss for failure to state a
11 claim. A complaint must include “a short and plain statement of the claim showing that the pleader
12 is entitled to relief.” Fed. R. Civ. P. 8(a)(2). While “detailed factual allegations” are not required, a
13 complaint must have sufficient factual allegations to “state a claim to relief that is plausible on its
14 face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic v. Twombly*, 550 U.S.
15 544, 570 (2007)). When evaluating such a motion, courts generally “accept all factual allegations
16 in the complaint as true and construe the pleadings in the light most favorable to the nonmoving
17 party.” *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). However, “[t]hreadbare recitals of
18 the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*,
19 556 U.S. at 678.

20 For actions sounding in fraud, the complaint “must state with particularity the
21 circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b). Such averments “must be
22 accompanied by ‘the who, what, when, where, and how’ of the misconduct charged,” such that
23 they are “specific enough to give defendants notice of the particular misconduct.” *Kearns v. Ford*
24 *Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009) (first quoting *Vess v. Ciba-Geigy Corp. USA*, 317
25 F.3d 1097, 1106 (9th Cir. 2003); and then quoting *Bly-Magee v. California*, 236 F.3d 1014, 1019
26 (9th Cir. 2001)). Knowledge may be pleaded generally under Rule 9(b), but the complaint “must
27 set out sufficient factual matter from which a defendant’s knowledge of a fraud might reasonably

1 be inferred.” *United States ex rel. Anita Silingo v. WellPoint, Inc.*, 904 F.3d 667, 679–80 (9th Cir.
2 2018).

3 IV. ANALYSIS

4 To survive Defendants’ motion to dismiss, each of Plaintiff’s claims must overcome three
5 hurdles: first, they must not be barred by section 230(c)(1) of the Communications Decency Act;
6 second, they must not be barred by the Limits on Liability within the Facebook Terms of Service;
7 and third, they must be sufficiently pled. After reviewing the FAC, not every claim can overcome
8 all three, so each hurdle is addressed in turn.

9 A. Section 230(c)(1) Immunity

10 Congress passed the Communications Decency Act in an effort to create and promote a
11 vibrant digital communications landscape. Among other things, section 230(c)(1) of the Act
12 generally exempts “information content providers” from liability for information provided by third
13 parties. *See, e.g., Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1099–100 (9th Cir. 2009). The section
14 states that “[n]o provider or user of an interactive computer service shall be treated as the
15 publisher or speaker of any information provided by another information content provider.” 47
16 U.S.C. § 230(c)(1). While this immunity is broad, it is not absolute. As the Ninth Circuit clarified
17 in *Barnes v. Yahoo!, Inc.*, the relevant inquiry is not how plaintiffs style their claims for relief, but
18 rather “whether the duty that the plaintiff alleges the defendant violated derives from the
19 defendant’s status or conduct as a ‘publisher or speaker.’” 570 F.3d at 1102. If the plaintiff alleges
20 that liability arises from the defendant’s “manifest intention to be legally obligated to do
21 something,” rather than from the defendant’s “status or conduct as a ‘publisher or speaker,’”
22 section 230(c)(1) does not apply. *Id.* at 1107; *see In re Zoom Video Commc’ns. Inc. Privacy*
23 *Litigation*, 525 F. Supp. 3d 1017, 1034 (N.D. Cal. 2021).

24 Defendant argues that all of Plaintiff’s claims are barred by section 230(c)(1). It asserts,
25 and Plaintiff does not contest, that Meta is a “provider . . . of an interactive computer service”
26 under the Act’s definition, and that the relevant information at issue was “provided by another
27 information content provider.” 47 U.S.C. § 230(c)(1); *see* Dkt. 24, at 22. Defendant further argues

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.