1   David C. Kiernan (State Bar No. 215335)
    dkiernan@jonesday.com
2   Craig E. Stewart (State Bar No. 129530)
    cestewart@jonesday.com
3   JONES DAY
    555 California Street, 26th Floor
4   San Francisco, CA 94104
    Telephone: +1.415.626.3939
5   Facsimile: +1.415.875.5700

6   Dayme Sanchez (State Bar No. 323864)
    daymesanchez@jonesday.com
7   JONES DAY
    1755 Embarcadero Road
8   Palo Alto, CA 94303
    Telephone: +1.650.739.3939
9   Facsimile: +1.650.739.3900

10 Attorneys for Defendant
    THE PROCTER & GAMBLE COMPANY

11

12   UNITED STATES DISTRICT COURT

13   NORTHERN DISTRICT OF CALIFORNIA

14

15 LAURA LOOMER, as an individual and in   Case No. 3:22-cv-02646-LB
    her capacity as a Candidate for United
16 States Congress, and LAURA LOOMER   **THE PROCTER & GAMBLE**
    FOR CONGRESS, INC.,   **COMPANY'S MOTION TO DISMISS**
17   **AND JOINDER IN CO-DEFENDANTS'**
                    Plaintiffs,   **MOTIONS TO DISMISS**
18
          v.   Judge: Honorable Laurel Beeler
19
    META PLATFORMS, INC., MARK   Date: January 26, 2023
20 ZUCKERBERG, in his capacity as CEO of   Time: 9:30 a.m.
    Meta Platforms, Inc. and as an individual,   Courtroom: B, 15th Floor
21 TWITTER, INC., and JACK DORSEY, in
    his capacity as former CEO of Twitter, Inc.
22 and as an individual, THE PROCTOR &
    GAMBLE CO., and DOES 1-100,
23 Individuals,

24   Defendants.
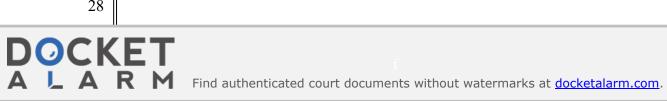
25

26

27

28

1

TABLE OF CONTENTS

2   **Page**

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

1

NOTICE OF MOTION AND MOTION

2   Please take notice that on January 26, 2023, at 9:30 a.m., or as soon thereafter as the

3 matter may be heard, in the Courtroom of the Honorable Laurel Beeler of the United States

4 District Court for the Northern District of California, defendant The Procter & Gamble Company

5 ("P&G") will and hereby moves to dismiss the First Amended Complaint (ECF 69). Please take

6 further notice that P&G joins in the motions to dismiss of co-defendants Meta Platforms, Inc. and

7 Mark Zuckerberg (together, "Meta") and Twitter, Inc. and Jack Dorsey (together, "Twitter") to be

8 heard on that same date.

9

RELIEF SOUGHT

10   P&G requests dismissal of all causes of action with prejudice under Federal Rule of Civil

11 Procedure 12(b)(6) for failure to state a claim upon which relief can be granted.

12

MEMORANDUM OF POINTS AND AUTHORITIES

13

INTRODUCTION

14   This latest installment in plaintiff Laura Loomer's serial lawsuits over her ban from

15 Facebook and Twitter adds P&G as a defendant. But Loomer has not stated a valid claim against

16 P&G. To the contrary, her complaint demonstrates that P&G's conduct was lawful and not

17 actionable. P&G is alleged only to have asserted its own legitimate business interest in not

18 having its advertisements appear next to hateful, denigrating, discriminatory, or other similarly

19 offensive content. Loomer alleges no possible basis for concluding that doing so was unlawful

20 under any cognizable legal theory, let alone that P&G formed a RICO enterprise with Meta and

21 Twitter to engage in a purported pattern of racketeering activity. The Court should dismiss her

22 complaint with prejudice.

23

BACKGROUND

24   The complaint says very little about P&G, and nothing that states a valid claim. The 118-

25 page, 387-paragraph complaint contains only a small handful of paragraphs that mention P&G.

26 ECF 69, ¶¶ 37–8, 233–39, 291, 292. Loomer alleges that a P&G employee announced at an April

27 11, 2019 meeting of the Association of National Advertisers that P&G "would require advertising

28 platforms to 'prove' that their content was 'under their complete control.'" *Id.* ¶ 233. The next

month, P&G allegedly provided a list of persons who were to be banned from Facebook unless those persons disavowed the Proud Boys. *Id.* ¶ 234. The complaint offers no facts to support this implausible allegation, citing only an unidentified "knowledgeable and reliable source." *Id.* Loomer does not allege who at P&G supposedly provided this list or to whom it was provided. *Id.* Nor does she allege that this purported list said anything about Loomer. In the complaint's only allegation attempting to tie P&G specifically to Loomer, Loomer alleges that, "[o]n or about May 2019," P&G demanded that Facebook label Loomer a "'Dangerous Individual' and ban her from using Facebook's platform." *Id.* ¶ 235. Again, Loomer offers no supporting facts and attributes the allegation only to an unidentified "knowledgeable and reliable source." *Id.*

That is the entirety of the allegations that attempt to connect P&G to Loomer. The remaining allegations about P&G describe alleged P&G statements or meetings as reported in news articles from June 24, 2020, more than a year after Loomer alleges she was permanently removed from Facebook and Twitter. *Id.* ¶¶ 236–39; *see id.* ¶ 217 (alleging permanent removal from Twitter on November 21, 2018); *id.* ¶ 218 (alleging permanent removal from Facebook on May 2, 2019). In those articles, a P&G employee is quoted as saying that P&G would not advertise near certain types of content and that it stopped spending on websites that do not meet its standards. *Id.* ¶¶ 237, 239. P&G is also reported to have met with a civil rights group to discuss Facebook's removal of content. *Id.* ¶ 238.

The complaint says nothing at all about any connection between P&G and Twitter, let alone any connection that involves Loomer. It does not allege anything about any P&G advertising on Twitter, any purported contacts between P&G and Twitter regarding offensive content on Twitter, or that Twitter took any action regarding Loomer or anyone else in response to anything P&G said or did. All of the statements or conduct attributed to P&G occurred long after Loomer alleges Twitter banned her in November 2018. *Id.* ¶ 217.

ARGUMENT

P&G joins in and adopts the arguments in Meta's and Twitter's motions to dismiss regarding Loomer's failure to allege valid RICO claims. As those motions demonstrate, Loomer has failed to validly allege any of the required elements of a RICO claim, including a RICO

DOCKET ALARM

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.

WHAT WILL YOU BUILD? | sales@docketalarm.com | 1-866-77-FASTCASE

fastcase
Smarter legal research.