

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LAUREN PRICE,
Plaintiff,

v.

TWITTER, INC.,
Defendant.

Case No. [22-cv-03173-SK](#)

ORDER ON MOTION TO DISMISS

Regarding Docket Nos. 29, 30

This matter comes before the Court upon consideration of Twitter, Inc.’s motion to dismiss. Having carefully considered the parties’ papers, relevant legal authority, and the record in the case, and having had the benefit of oral argument, the Court hereby grants Twitter’s motion for the reasons set forth below. The Court GRANTS Twitter’s request for judicial notice. Fed. R. Evid. 201.

BACKGROUND

Plaintiff Lauren Price brings this putative class action against Twitter related to Twitter’s disclosure of Plaintiff’s and the purported class’s telephone numbers and email addresses (“personal information”). (Dkt. No. 1 (Compl.), ¶ 3.) Plaintiff alleges that Twitter disclosed her personal information for advertising and marketing purposes. (*Id.*) Twitter collected Plaintiff’s personal information under the guise that it would be used for security related functions, such as two-factor authentication and account recovery. (*Id.*, ¶ 4.) However, Twitter also used this personal information for its marketing products, enabling advertisers to target specific groups of Twitter users by matching telephone numbers and email addresses that Twitter had collected to the advertisers’ own existing or purchased lists of telephone numbers and email addresses. (*Id.*, ¶ 5.)

Commercial entities regularly use Twitter to advertise to consumers. Of the \$3.4 billion in revenue that Twitter earned in 2019, \$2.99 billion was from advertising. (*Id.*, ¶ 24.) While

1 Twitter represented to users, including Plaintiff, that it collected users' telephone numbers and
2 email addresses to secure their accounts, Twitter failed to disclose that it also used their personal
3 information to aid advertisers in reaching their preferred audiences. (*Id.*, ¶ 27.) Twitter's
4 misrepresentations violate an order from the Federal Trade Commission issued in 2011, which
5 specifically prohibited Twitter from making misrepresentations regarding the security of
6 nonpublic consumer information such as their emails and phone numbers. (*Id.*, ¶ 28.)

7 The International Trade Administration of the U.S. Department of Commerce (the
8 "Commerce Department") coordinated with the European Commission and the Swiss
9 Administration to craft Privacy Shield Frameworks for commercial data transfers. (*Id.*, ¶ 56.)
10 Companies self-certify and annually affirm to the Commerce Department that they complied with
11 the Privacy Shield Principles, including that "[a]n organization may not process personal
12 information in a way that is incompatible with the purposes for which it has been collected or
13 subsequently authorized by the individual." (*Id.*, ¶ 57.) A company under the FTC's jurisdiction
14 that self-certified to the Privacy Shield Principles, but failed to comply with the Privacy Shield,
15 may be subject to an enforcement action based on the FTC's deception authority under Section 5
16 of the FTC Act. (*Id.*, ¶ 58.) On November 16, 2016, Twitter self-certified its participation in the
17 Privacy Shield and has reaffirmed its participation in the Privacy Shield to the Commerce
18 Department each year thereafter. (*Id.*, ¶ 60.)

19 Twitter states in its Terms of Service:

20 Twitter's "Privacy Policy (<https://www.twitter.com/privacy>)
21 describes how we handle the information you provide to us when you
22 use our Services. You understand that through your use of the
Services you consent to the collection and use (as set forth in the
Privacy Policy) of this information . . .

23 (*Id.*, ¶ 64.) Twitter's Privacy Policy in turn states:

24 We believe you should always know what data we collect from you
25 and how we use it, and that you should have meaningful control over
26 both. We want to empower you to make the best decisions about the
information that you share with us.

27 (Dkt. No. 29-3 (Privacy Policy attached as Ex. B to the Declaration of Susan B. Engel), p. 1.)

28 When you use Twitter, even if you're just looking at Tweets, we

you're using and your IP address. You can choose to share additional information with us like your email address, phone number, address book contacts, and a public profile. We use this information for things like keeping your account secure and showing you more relevant Tweets, people to follow, events, and ads.

We give you control through your settings to limit the data we collect from you and how we use it, and to control things like account security, marketing preferences, apps that can access your account, and address book contacts you've uploaded to Twitter. You can also download information you have shared on Twitter.

(*Id.*, p. 2.)

We use your contact information, such as your email address or phone number, to authenticate your account and keep it - and our services - secure, and to help prevent spam, fraud, and abuse. *We also use contact information to enable certain account features (for example, for login verification or Twitter via SMS), and to send you information about our services, and to personalize our services, including ads. . .*

(*Id.*, § 1.3 (emphasis added).)

We share or disclose your personal data with your consent or at your direction, such as when you authorize a third-party web client or application to access your account or when you direct us to share your feedback with a business

Subject to your settings, we also provide certain third parties with personal data to help us offer or operate our services. You can learn more about these partnerships in our Help Center, and you can control whether Twitter shares your personal data in this way by using the "Allow additional information sharing with business partners" option in your Personalization and Data settings. (This setting does not control sharing described elsewhere in our Privacy Policy, such as when we share data with our service providers, or through partnerships other than as described in our Help Center.)

(*Id.*, § 3.1.)

Plaintiff alleges that Twitter violated its Privacy Policy because Plaintiff and the purported class members did not "know what data" Twitter "collect[ed] from [them] and how we use[d] it," because Plaintiff and purported class members did not have "have meaningful control over both," because Twitter did not give its users "control through [their] settings to limit the data we collect from you and how we use" it, and because Twitter did "share or disclose [users'] personal data" without their "consent or at [users'] direction. (Dkt. No. 1, ¶ 68.)

Based on these allegations, Plaintiff brings the following four claims against Twitter: (1)

breach of contract; (2) breach of the implied contract; (3) violation of California's Unfair

1 Competition Law (“UCL”), California Business & Professions Code § 17200; and (4) unjust
2 enrichment.

3 ANALYSIS

4 A. Applicable Legal Standard on Motion to Dismiss.

5 A motion to dismiss is proper under Federal Rule of Civil Procedure 12(b)(6) where the
6 pleadings fail to state a claim upon which relief can be granted. On a motion to dismiss under
7 Rule 12(b)(6), the Court construes the allegations in the complaint in the light most favorable to
8 the non-moving party and takes as true all material allegations in the complaint. *Sanders v.*
9 *Kennedy*, 794 F.2d 478, 481 (9th Cir. 1986). Even under the liberal pleading standard of Rule
10 8(a)(2), “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires
11 more than labels and conclusions, and a formulaic recitation of the elements of a cause of action
12 will not do.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*,
13 478 U.S. 265, 286 (1986)). Rather, a plaintiff must instead allege “enough facts to state a claim to
14 relief that is plausible on its face.” *Id.* at 570.

15 “The plausibility standard is not akin to a probability requirement, but it asks for more than
16 a sheer possibility that a defendant has acted unlawfully. . . . When a complaint pleads facts that
17 are merely consistent with a defendant’s liability, it stops short of the line between possibility and
18 plausibility of entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting
19 *Twombly*, 550 U.S. at 557) (internal quotation marks omitted). If the allegations are insufficient to
20 state a claim, a court should grant leave to amend, unless amendment would be futile. *See, e.g.*
21 *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990); *Cook, Perkiss & Lieche, Inc. v. N.*
22 *Cal. Collection Serv., Inc.*, 911 F.2d 242, 246-47 (9th Cir. 1990).

23 As a general rule, “a district court may not consider material beyond the pleadings in ruling
24 on a Rule 12(b)(6) motion.” *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994), *overruled on*
25 *other grounds*, *Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002) (citation omitted).
26 However, documents subject to judicial notice, such as matters of public record, may be
27 considered on a motion to dismiss. *See Harris v. Cnty of Orange*, 682 F.3d 1126, 1132 (9th Cir.

28 2011). In doing so, the Court does not convert a motion to dismiss to one for summary judgment.

1 *See Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986), *overruled on other*
 2 *grounds by Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104 (1991). “The court need
 3 not . . . accept as true allegations that contradict matters properly subject to judicial notice . . .”
 4 *Sprewell v. Golden State Warriors*, 266 F. 3d 979, 988 (9th Cir. 2001).

5 **B. Twitter’s Motion to Dismiss.**

6 **1. Injury.**

7 To establish Article III standing, a plaintiff must show that he or she has suffered an
 8 “injury in fact” that is “fairly traceable” to the defendant’s conduct and would likely be “redressed
 9 by a favorable decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992)
 10 (alterations and internal quotation marks omitted). “The plaintiff, as the party invoking federal
 11 jurisdiction, bears the burden of establishing these elements.” *Spokeo, Inc. v. Robins*, 578 U.S.
 12 330, 338 (2016). Moreover, “[w]here, as here, a case is at the pleading stage, the plaintiff must
 13 “clearly . . . allege facts demonstrating” each element. *Id.* (quoting *Warth v. Seldin*, 422 U.S. 490,
 14 518 (1975)). To allege injury in fact, a plaintiff must allege that he or she suffered “an invasion of
 15 a legally protected interest” that is “concrete and particularized” and “actual or imminent, not
 16 conjectural or hypothetical.” *Lujan*, 504 U.S. at 560 (internal quotation marks omitted). “A
 17 ‘concrete’ injury must be ‘*de facto*’; that is, it must actually exist.” *Spokeo, Inc.*, 578 U.S. at 340.
 18 “[S]tanding is claim- and relief-specific, such that a plaintiff must establish Article III standing for
 19 each of her claims and for each form of relief sought.” *In re Carrier IQ, Inc.*, 78 F. Supp. 3d
 20 1051, 1064-65 (N.D. Cal. 2015) (internal quotations omitted) (citing *DaimlerChrysler Corp. v.*
 21 *Cuno*, 547 U.S. 332, 352 (2006) (“our standing cases confirm that a plaintiff must demonstrate
 22 standing for each claim he seeks to press”)).

23 Additionally, to have standing to bring a claim under the UCL, Plaintiffs must have
 24 suffered an injury in fact and must have lost money or property as a result of the unfair
 25 competition. *See* Cal. Bus. & Prof. Code § 17204; *see also Californians for Disability Rights v.*
 26 *Mervyn’s, LLC*, 39 Cal. 4th 223, 227 (2006). “To satisfy the narrower standing requirements
 27 imposed by Proposition 64, a party must now (1) establish a loss or deprivation of money or
 28 property sufficient to qualify as injury in fact, i.e., economic injury, and (2) show that the

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