

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MAXIMILIAN KLEIN, et al.
Plaintiffs,
v.
FACEBOOK, INC.,
Defendant.

Case No. 20-CV-08570-LHK

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS WITH LEAVE TO AMEND**

Re: Dkt. No. 97

Plaintiffs Maximilian Klein; Sarah Grabert; and Rachel Banks Kupcho (collectively, “Consumers”) and Affilious, Inc.; Jessyca Frederick; Mark Young; Joshua Jeon; 406 Property Services, PLLC; Mark Berney; Jessica Layser; Katherine Looper; and Zahara Mossman (collectively, “Advertisers”) individually and on behalf of all others similarly situated, sue Defendant Facebook, Inc. (“Facebook”).

Before the Court is Facebook’s motion to dismiss the Consolidated Consumer Class Action Complaint and the Consolidated Advertiser Class Action Complaint. ECF No. 97. Having considered the parties’ submissions, the parties’ arguments at the hearing, the relevant law, and the record in this case, the Court GRANTS IN PART and DENIES IN PART Facebook’s motion to dismiss with leave to amend.

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

I. Procedural History..... 1

II. Legal Standard..... 3

 A. Motion to Dismiss Under Federal Rule of Civil Procedure 12(b)(6)..... 3

 B. Leave to Amend..... 4

III. Discussion 5

 A. Consumers and Advertisers Adequately Allege that Facebook Has Monopoly Power in Cognizable Product Markets..... 7

 1. Consumers Adequately Allege that Facebook Has Monopoly Power in the Social Network and Social Media Markets..... 9

 2. Advertisers Adequately Allege that Facebook Has Monopoly Power in the Social Advertising Market 33

 B. The Court Denies Facebook’s Motion to Dismiss Consumers’ Data Privacy Claims 38

 1. Consumers Allege that Facebook Obtained and Maintained Monopoly Power by Repeatedly Deceiving Users About Facebook’s Data Privacy Practices..... 40

 2. Consumers Allege with Sufficient Particularity that Facebook Made Numerous “Clearly False” Representations About Its Collection and Monetization of Data..... 53

 3. Consumers’ Data Privacy Claims Are Timely..... 55

 4. Consumers Adequately Allege that Facebook’s False Representations About Its Data Privacy Practices Were Not Readily Susceptible of Neutralization 58

 5. Consumers Adequately Allege that Facebook’s False Representations Were “Clearly Material” 61

 6. Consumers Adequately Allege Causal Antitrust Injury..... 65

 7. Consumers’ Request for Injunctive Relief as a Remedy for Consumers’ Data Privacy Claims Is Not Barred by the Doctrine of Laches 69

 C. The Court Grants Facebook’s Motion to Dismiss Consumers’ and Advertisers’ “Copy, Acquire, Kill” Claims With Leave to Amend 70

 1. Consumers and Advertisers Allege that Facebook’s “Copy, Acquire, Kill” Strategy Allowed Facebook to Maintain Monopoly Power 72

 2. Consumers’ and Advertisers’ “Copy, Acquire, Kill” Claims Are Untimely 88

 D. The Court Denies Facebook’s Motion to Dismiss Advertisers’ GNBA Claims 100

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

- 1. The Google Network and Bidding Agreement 100
- 2. Advertisers Adequately Allege that the GNBA Caused Them Injury 102
- E. The Court Grants Facebook’s Motion to Dismiss Consumers’ Unjust Enrichment Claim
With Leave to Amend..... 106
- IV. Conclusion..... 107

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Northern District of California

I. PROCEDURAL HISTORY

On December 3, 2020, Plaintiffs Klein and Grabert filed an initial complaint against Defendant Facebook. ECF No. 1. Subsequently, 11 other antitrust cases were filed by consumers and advertisers against Facebook. On February 9, 2021, the Court: (1) granted motions to relate *Sherman v. Facebook*, *Kupcho v. Facebook*, *Dames v. Facebook*, *Steinberg v. Facebook*, *Layser v. Facebook*, and *Rosenman v. Facebook* to the instant case; (2) concluded that *Affilious v. Facebook* was related to the instant case; and (3) consolidated these cases with the instant case. ECF No. 47. On February 11, 2021, Plaintiff Rosenman voluntarily dismissed her case. *Facebook v. Rosenman*, No. 21-CV-00336-LHK, ECF No. 17.

On February 25, 2021, the Court granted motions to relate *Kovacevich v. Facebook* and *Garvin v. Facebook* to the instant case and consolidated these cases with the instant case. ECF No. 50. On March 16, 2021, the Court granted a motion to relate *Wasvary v. Facebook* to the instant case and consolidated it with the instant case. ECF No. 68. On April 9, 2021, the Court granted a motion to relate *Ryan v. Facebook* to the instant case and consolidated that case with the instant case. ECF No. 85.

After voluntarily dismissing her federal case on February 11, 2021, Plaintiff Rosenman refiled her case in state court, and Facebook removed the refiled case to federal court. *See Rosenman v. Facebook*, No. 21-CV-2108, ECF No. 1. On April 9, 2021, the Court related the refiled *Rosenman Case* to the instant case. ECF No. 85. On April 26, 2021, Rosenman filed a motion to remand, which the Court denied on August 27, 2021. *Rosenman v. Facebook*, No. 21-CV-02108-LHK, ECF Nos. 17, 26.

On March 18, 2021, the Court held a hearing on motions for appointment as interim class counsel. ECF No. 77. That same day, the Court appointed Stephen A. Swedlow of Quinn Emanuel Urquhart & Sullivan, LLP and Shana A. Scarlett of Hagens Berman Sobol Shapiro LLP as Interim Class Counsel for the Consumer class (“Consumers”) and appointed Warren Postman of Keller Lenkner and Brian D. Clark of Lockridge Grindal Nauen P.L.L.P. to serve on Plaintiffs’ Executive Committee for Consumers. ECF No. 73.

1 On March 18, 2021, the Court appointed Yavar Bataee of Bathaee Dunne LLP and Kristen
2 M. Anderson of Scott + Scott LLP as Interim Class Counsel for the Advertiser class
3 (“Advertisers”) and appointed Tina Wolfson of Ahdoot & Wolfson, PC and Keith J. Verrier of
4 Levin Sedran & Berman LLP to serve on Plaintiffs’ Executive Committee for Advertisers. *Id.*

5 On April 22, 2021, Consumers filed a Consolidated Consumer Class Action Complaint.
6 ECF No. 87 (“CC”). Consumers are individuals who use Facebook’s services, including
7 Facebook, Facebook Messenger, Instagram, and WhatsApp. *Id.* ¶¶ 19, 23, 26. Consumers allege
8 that, “[a]bsent Facebook’s anticompetitive scheme, fair competition would have required
9 Facebook to provide consumers greater value in return for consumers’ data on a market-wide
10 basis.” *Id.* ¶ 10. Consumers seek to represent a class of “[a]ll persons in the United States who
11 maintained a Facebook profile at any point from 2007 up to the date of the filing of this action.”
12 *Id.* ¶ 248. Consumers assert five claims: (1) monopolization of the Social Network Market in
13 violation of § 2 of the Sherman Act; (2) attempted monopolization of the Social Network Market
14 in violation of § 2 of the Sherman Act; (3) monopolization of the Social Media Market in violation
15 of § 2 of the Sherman Act; (4) attempted monopolization of the Social Media Market in violation
16 of § 2 of the Sherman Act; and (5) unjust enrichment under California common law. *Id.* ¶¶ 260–
17 317.

18 On April 22, 2021, Advertisers filed a Consolidated Advertiser Class Action Complaint.
19 ECF No. 86 (“AC”). Advertisers are individuals, entities, and corporations who purchased
20 advertising from Facebook. *Id.* ¶¶ 24–33. Advertisers allege that they paid prices for advertising
21 that were “higher than they would have been absent Facebook’s anticompetitive conduct and
22 unlawfully acquired and/or maintained monopoly.” *Id.* ¶ 33. Affilious, Inc.; Jessyca Frederick;
23 Joshua Jeon; and 406 Property Services, PLLC seek to represent a class of “[a]ll persons, entities,
24 and/or corporations in the United States who purchased advertising from Facebook between
25 October 1, 2012, and April 3, 2018, but not after April 3, 2018.” AC ¶ 529. Mark Berney, Mark
26 Young, Jessica Layser, Katherine Looper, and Zahara Mossman seek to represent a class of “[a]ll
27 persons, entities, and/or corporations in the United States who purchased advertising from

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