

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CLIFFY CARE LANDSCAPING LLC
15837 S. Mahaffie Street
Olathe, KS 66062

on behalf of itself and all others similarly
situated,

Plaintiff,

v.

FACEBOOK, INC.
1601 Willow Road
Menlo Park, CA 94025

GOOGLE LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043,

and

ALPHABET INC.
1600 Amphitheatre Parkway
Mountain View, CA 94043

Defendants.

Case No. _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff, individually and on behalf of a Class of all those similarly situated, brings this class action complaint for equitable relief and treble damages against Defendants, FACEBOOK, INC. (“Facebook”), GOOGLE LLC, and ALPHABET INC. (collectively, “Google”) for violation of the Sherman Antitrust Act, 15 U.S.C. § 1, and alleges as follows:

I. NATURE OF THIS ACTION

1. In 2019, spending in the United States on digital, online advertising reached \$129.34 billion, exceeding for the first time the total spent in the U.S. on all forms of traditional print, radio, television and billboard advertising. In 2021, digital ad spending in the U.S. is expected to reach \$198 billion, about a third of which, or \$66.2 billion, will be spent on search advertising, in which advertisers target search engine users searching for a particular product or service and pay to have ads placed next to the search results. This audience is composed mostly of users of Google, which has an 88% share of search queries in the U.S. and a 92% share of search queries worldwide. The remaining U.S. digital ad spend, or about \$132 billion, will be spent on display advertising, in which advertisers place images, banners, or videos on websites likely to be viewed by the advertiser's target audience.

2. About 86% of today's online display advertising will be bought and sold electronically at high speeds through centralized trading venues known as "exchanges." Beginning in 2005, the rise of electronic ad trading, known as "programmatic advertising," has transformed advertising from a relationship business to a commodity business, with publishers¹ and advertisers transacting with each other in an electronic spot market. Google's advertising exchange alone trades ad spaces targeted to billions of individual users and processes tens of billions of targeted ads daily.

3. With enormous audiences, a huge inventory of content, and the advantages of network effects and technological prowess, Google, Facebook, and Amazon control about 79% of non-search digital advertising. Facebook's 2.8 billion monthly users and Google's 1.8 billion

¹ A publisher is the operator of a website or mobile app that makes space available for the display of advertisements, including images, banners, and videos.

Gmail account holders—together with their identities, search and browsing histories, spending habits, social connections, and locations—endow these firms with unprecedented capacity to reach and target consumers. In addition to selling display space on their “owned-and-operated” properties, Google, Facebook, and to a lesser extent, Amazon, also sell advertisers space on third party websites, acting as intermediaries in what has become known as the “open display” advertising market.

4. A large proportion of open display advertising is sold directly to advertisers through the “ad networks” operated by each of these firms: the Google Display Network (“GDN”) (part of Google Ads), the Facebook Audience Network (“FAN”), and the Amazon Demand Side Platform (“Amazon DSP”). Defendants’ ad networks, GDN and FAN, accounts for about 67% of the total open display ad spend, while Amazon’s share and those of other networks are far lower.

5. Defendants’ horizontally competing ad networks, GDN and FAN, should vigorously compete for advertisers and publishers, but they do not. Instead, as alleged in a Complaint filed against Google on December 16, 2020 by 10 state attorneys general² and elaborated upon in an article in the *New York Times* on January 17, 2021,³ Defendants conspired to allocate to one another the advertisers and publishers affiliated with each network and to eliminate competition between them in the open display advertising market. In an agreement that Google insiders codenamed “Jedi Blue,” Facebook agreed to bid FAN’s demand through Google’s ad exchange, rather than directly through multiple exchanges using a competing technology called “header bidding.” In return for that agreement, FAN received (i) preferential

² Texas *et al.* v. Google LLC, *Complaint* (E.D.Tx. 4:20-cv-00957, filed Dec. 12, 2020).

³ Daisuke Wakabayashi and Tiffany Hsu, “Behind a Secret Deal Between Google and Facebook,” *New York Times*, Jan. 17, 2021, available at <https://nyti.ms/3imRzwt>.

treatment over other bidders, including a guaranteed “win rate,”; (ii) superior information about the advertising opportunity, including the identity of the user most of the time; and (iii) increased “timeouts” for Facebook to bid before it was excluded from the auction, all of which allowed Facebook to bid and win more often relative to non-Facebook bidders.

6. Defendants’ conspiracy to collude rather than compete violates Section 1 of the Sherman Act, 15 U.S.C. § 1, and has caused and will continue to cause injury and economic harm to Plaintiff and all other similarly situated advertisers that bid through Google’s Open Bidding program through any non-FAN ad network or demand-side platform, including Google Ads and GDN, for which Plaintiff seeks appropriate equitable relief and damages through this action.

II. JURISDICTION AND VENUE

7. This Court has original jurisdiction over Plaintiff’s federal antitrust claims, which arise under Sections 1 and 15 of the Sherman Act, 15 U.S.C. §§ 1, 15, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26. The Court also has diversity jurisdiction over this action under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one class member is of diverse citizenship from Defendants, there are more than 100 class members nationally, and the aggregate amount in controversy exceeds \$5,000,000. This Court also has subject matter jurisdiction over Sherman Act claims pursuant to 28 U.S.C. §§ 1331 & 1337.

8. This Court has personal jurisdiction over Defendants, which are found and transact business in this district.

9. The Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), (c), and (d) because during the Class Period (defined below), Defendants resided, transacted business, and had agents in this district.

10. Defendants' acts were within the flow of, were intended to have, and did have a substantial effect on the interstate commerce of the United States.

III. PARTIES

A. Plaintiff

11. Plaintiff Cliffy Care Landscaping is a limited liability company in good standing, registered in the state of Kansas, with a principal place of business at 15837 S. Mahaffie Street, Olathe, Kansas, 66062. Plaintiff purchased display advertising through Google Ads between September 2018 and the present.

B. Defendants

12. Defendant Facebook, Inc., is a publicly traded, for-profit company, organized under the laws of Delaware with its principal place of business at 1601 Willow Road, Menlo Park, California. Facebook's principal business provides personal social network services to approximately 3 billion people throughout the world through control of its network, known internally as "Facebook Blue."

13. Defendant Google LLC, is a limited liability company organized under the laws of Delaware with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California. Google LLC is a wholly owned and controlled subsidiary of XXVI Holding Inc., which is a subsidiary of Defendant Alphabet Inc.

14. Defendant Alphabet Inc., is a publicly traded, for-profit company organized under the laws of Delaware with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California. Google LLC is a wholly owned subsidiary of Alphabet.

15. Defendants Google LLC and Alphabet Inc., are collectively referred to herein as "Google." Google is a technology company that provides internet-related services and products,

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.