

United States District Court
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

PHILLIP R. CRUTCHFIELD,	§	
Individually and on Behalf of All Others	§	
Similarly Situated	§	
	§	
v.	§	CIVIL ACTION NO. 3:19-CV-2356-S
	§	
MATCH GROUP, INC., AMANDA W.	§	
GINSBERG, and GARY SWIDLER	§	

MEMORANDUM OPINION AND ORDER

This Memorandum Opinion and Order addresses Defendants’ Motion to Dismiss (“Motion to Dismiss”) [ECF No. 38].¹ For the following reasons, the Court **GRANTS** the Motion.

I. FACTUAL BACKGROUND

This is a putative securities class action brought by co-lead Plaintiffs Phillip Crutchfield and Samir Ali Cherif Benouis (“Plaintiffs”) alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”), and Securities and Exchange Commission (“SEC”) Rule 10b-5 promulgated thereunder, against Defendants Match Group, Inc. (“Match”), Amanda Ginsberg (“Ginsberg”), and Gary Swidler (“Swidler”). The putative class consists of all persons and entities who purchased or otherwise acquired common stock of Match between November 6, 2018, and January 31, 2020 (“Relevant Time Period”). *See* ECF No. 37, Amended Class Action Complaint (“Amended Complaint” or “CAC”) ¶ 1.

Match is a publicly traded company that operates various dating and matchmaking websites, including Match.com, Tinder, PlentyofFish, Meetic, and Pairs, among others. *Id.* ¶¶ 2, 14. During the Relevant Time Period, Swidler was Match’s Chief Financial Officer (“CFO”), and

¹ This case was transferred from the docket of Judge Ada Brown to the docket of this Court on February 2, 2021. *See* ECF No. 44.

Ginsberg was Match's Chief Executive Officer ("CEO"). *Id.* ¶¶ 15-16. Match's revenue is primarily derived from registered members who subscribe to a recurring "premium" or "paid" membership. *Id.* ¶¶ 2, 34. Members not subscribed to a premium membership can still use Match's basic functionalities for free. *See id.* ¶ 31. In addition to using typical reporting metrics like revenues and earnings, Match tracks its performance by evaluating the conversion rate from unpaid to paid memberships, "paid member count" ("PMC"), that is, the number of members on premium or paid membership accounts, and "average revenue per user." *Id.* ¶¶ 2, 47. Match's public filings and statements also routinely refer to "Subscribers," who are "users who purchase a subscription to one of [Match's] products," and "Average Revenue per Subscriber" ("ARPU"), which is "Direct Revenue from Subscribers in the relevant measurement period . . . divided by the Average Subscribers in such period . . . further divided by the number of calendar days in such period," as pertinent operating metric terms. ECF No. 39, Appendix of Exhibits in Support of Defendants' Motion to Dismiss ("Defs.' App.") 38, 163, 323, 460, 493, 525, 576, 617, 665, 699, 747. One of Match's key goals was to convert unpaid members into paid members. CAC ¶ 34.

According to the 170-page Amended Complaint, Match's revenue growth during the Relevant Time Period was driven, at least in part, by widespread fraudulent accounts consisting of scammers and "bots" (autonomous programs that can interact with systems or users).² *Id.* ¶ 36. Such fraud was "widespread knowledge" at Match, and Ginsberg and Swidler—as senior leaders—allegedly knew the statistics on the number of fraudulent accounts and had detailed discussions about Match's fraud problem with the Product Division or developers. *Id.* ¶¶ 39, 50. Match's fraud problem was also discussed during company-wide meetings. *Id.* While Match had a Fraud Department to flag and remove scammers, the Amended Complaint alleges that the

² The Amended Complaint also details allegations that Match brands failed to screen properly for sex offenders and felons. *See id.* ¶¶ 58-65.

department was insufficient, as it was comprised of only eight members who worked around the clock to review the hundreds of accounts flagged per day.³ *Id.* ¶ 42. At Match.com, customer service representatives were also responsible for detecting fraudulent accounts that had slipped through Match’s automatic flagging process. *Id.* ¶ 43.

Plaintiffs allege that these review measures were inadequate. *See id.* ¶ 44. One confidential witness—a Match.com senior finance manager—reported that “15% of all Match.com membership registrations were fraudulent.” *Id.* A confidential witness at Tinder similarly stated that approximately 20% of Tinder’s accounts were bots and/or fraudulent, and that Tinder did not adjust its membership numbers in financial reports to account for these fraudulent accounts. *Id.* ¶ 45. According to that witness, there was also “no doubt” that some fraudulent account holders paid to have premium Tinder account features to further advance their fraudulent activities. *Id.*

Defendants allegedly knew of these fraudulent users but failed to take necessary actions to address the problem, preferring instead to focus on the revenue-producing metrics. *Id.* ¶ 46. In support of this contention, Plaintiffs assert that Ginsberg and Swidler participated in monthly 30-minute presentations and received a monthly report that summarized Match brands’ financial performance and forecasts using data that “did not adjust out the fraudulent accounts.”⁴ *Id.* Plaintiffs further allege that rather than striving to achieve accurate forecasts to identify and reduce fraudulent account activity, Ginsberg and Swidler were more focused on tracking revenue-

³ It is unclear from the face of the Amended Complaint whether the Fraud Department is limited to Match.com only or if the department was part of Match, more broadly. *See id.* ¶ 42 (referring inconsistently to the Fraud Department(s) at Match and Match.com).

⁴ The Amended Complaint also asserts more generally that Ginsberg and Swidler would have been aware of any “red flags” regarding the effects of fraudulent users on Match brands’ financial metrics given their interactions with leaders of the respective brands, their prior roles with specific brands, and their presence at forecast meetings with other Match executives. *See id.* ¶¶ 64, 177-79. According to Plaintiffs, everyone in the headquarters building had knowledge of the number of fraudulent accounts, and a highly visible “wall of screens” at Match’s headquarters tracked Match’s website usage levels and traffic patterns and, in turn, could indicate fraudulent activity. *Id.* ¶ 180.

generating data, such as each brand's PMC or ARPU. *Id.* ¶¶ 47-48. And to ensure that Match met previous forecasts, and to make it appear as if its membership was steadily growing on its earnings reports, Match purportedly employed various “gimmicks” to increase closing numbers, such as offering heavy discounts near the end of a quarter or year to increase PMC, upselling packages, reducing payment rates, and adjusting refund policies to maximize paid membership retention.⁵ *Id.* The Amended Complaint claims that both Ginsberg and Swidler were well aware of these efforts. *Id.* ¶ 48. Another alleged strategy to increase paid subscriptions was to notify non-paying users that other members had “liked” them or sent them messages—even if those members were later discovered to be fraudulent—to entice the non-paying users to upgrade their memberships, which would enable them to view the “likes” and read the messages. *Id.* ¶¶ 66-69 (detailing Match.com's supposed marketing strategy).

The Amended Complaint also contends that the effect of fraudulent activities on Match's financial data was a “point of frustration” for Match and, particularly, for Ginsberg and Swidler. *Id.* ¶¶ 49, 91. Specifically, Plaintiffs assert that as PlentyofFish's employees weeded out fraudulent accounts, its PMC and ARPU numbers would also decrease—which led to PlentyofFish consistently lowering its previously forecasted financial numbers. *Id.* According to the Amended Complaint, Match only paid attention to its fraud problem when it created a variance on forecasted PMC or ARPU figures. *See id.* ¶¶ 49, 54, 65.

These fraudulent accounts were also relevant to an investigation and lawsuit by the Federal Trade Commission (“FTC”). In March 2017, the FTC requested information and documents from Match in connection with a civil investigation into Match.com's business practices. *Id.* ¶ 153.

⁵ The Amended Complaint also alleges that Match used deceptive promotional offers and a purposefully convoluted and deceptive billing, cancellation, and refund model to increase and retain its paying-member base. *See id.* ¶¶ 70-84.

Several months later, in November 2018, the FTC offered to settle potential claims regarding Match.com’s marketing, chargeback, and online cancellation practices via a consent judgment, requiring certain changes in Match.com’s business practices, and a \$60 million payment. *Id.* Match and the FTC discussed this settlement proposal but did not reach a resolution. *Id.* On August 7, 2019, the FTC voted to bring claims against Match and referred the case to the U.S. Department of Justice (“DOJ”). *Id.* On September 25, 2019, Match reported that the DOJ opted not to pursue a civil case and referred the matter back to the FTC, which then filed a lawsuit against Match. *Id.* The lawsuit alleged that Match.com, among other things, “us[ed] artificial love interest ads to deceive customers into buying or upgrading subscriptions, fail[ed] to resolve disputed charges, and intentionally ma[de] it difficult to cancel subscriptions.” *Id.* ¶ 165.

A. *Alleged Misrepresentations*

Against this factual backdrop, Plaintiffs allege that Match defrauded investors. Specifically, Plaintiffs assert that Match made material misstatements and/or omissions, regarding: (1) the integrity of Match’s membership base; (2) financial results reported in public filings; (3) certifications that Match had adequate internal controls; and (4) the FTC’s investigation and lawsuit. *See id.* ¶ 88. Plaintiffs refer to these four categories of alleged misstatements respectively as: (1) Membership Integrity Fraud; (2) Reported Results Fraud; (3) Internal Controls Fraud; and (4) FTC Investigation Fraud. *Id.*

(1) *Integrity of Match’s Membership Base*

According to the Amended Complaint, Defendants made materially false and misleading misrepresentations regarding the integrity and quality of Match’s membership in various public statements and filings. *See id.* ¶ 89. They are as follows:

- On November 6, 2018, Match issued a press release announcing its Q3 2018 financials, in which Ginsberg stated that Match “delivered another quarter of strong top and bottom line growth” and highlighted Match’s “8.1

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