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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

</div>

DZ Reserve and Cain Maxwell (d/b/a Max Martialis), *individually and on behalf of others similarly situated*, Plaintiffs, v. META PLATFORMS, INC., Defendant.	Case No. 3:18-cv-04978-JD **PLAINTIFFS' TRIAL BRIEF** Complaint Filed: August 15, 2018 Trial Date: October 14, 2025 Court: Courtroom 11, 19th Floor Hon. James Donato

1   **I.   INTRODUCTION**

2   Meta Platforms, Inc. ("Meta"), formerly known as Facebook, defrauded its advertisers. As

3   the Court explained in its class certification order, "The gravamen of the lawsuit is that Meta

4   inflated its potential advertising reach to consumers and charged artificially high premiums for ad

5   placements." ECF No. 388 at 1. Meta engaged in this alleged misconduct between August 15,

6   2015 and October 27, 2021. ECF Nos. 470 at 2, 471.

7   As internal Meta correspondence shows, Potential Reach was the cornerstone of

8   Facebook's ads platform. The Potential Reach metric told advertisers how many people were in

9   an ad set's target audience and was displayed to every advertiser on Ads Manager. Advertisers

10   used Potential Reach to plan, budget and evaluate the performance of their campaigns. This is why,

11   according to Meta, Potential Reach is "arguably the single most important number in [its] ads

12   creation interface."

13   Yet Potential Reach was always expressed as a number of individual "people," when it was

14   really accounts—and this discrepancy between people and accounts made the Potential Reach

15   number inaccurate. ECF No. 388 at 10.

16   Internally senior Meta executives for years acknowledged that Potential Reach was inflated

17   and misleading. Meta executives also knew its misrepresentations about Potential Reach yielded

18   significant revenue. When Meta considered implementing a model to reduce Potential Reach

19   inflation, the successful counterargument was that Meta would suffer a severe negative "revenue

20   impact." This prompted the Potential Reach Product Manager to observe, "it's revenue we should

21   have never made given the fact it's based on wrong data." So Meta continued to hide its fraud.

22   Executives directed subordinates to conceal the impact of fake or duplicate accounts on Potential

23   Reach and blocked employees from reducing the inflation or changing the metric to make it less

24   misleading. When employees suggested changing the disclosures around Potential Reach to make

25   it clear the metric measured accounts and not people, the Chief Revenue Officer pushed back,

26   noting that the "people-based narrative" is key to Meta's value proposition.

27   Meta knew Potential Reach was inflated across the board. Alex Schultz, VP of Analytics,

28   acknowledged "huge issues. . . with external metrics," and that "we know our overall 'people'

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1   number has >10% fake accounts and SUMA [duplicate accounts] in it so there must be at least that

2   much error in our metrics when we tell people the reach of their campaigns." This is consistent

3   with Plaintiffs' expert analysis showing that Potential Reach is inflated for everyone by at least

4   10%.

5   Meta acknowledged Potential Reach inflation caused all advertisers to spend more money

6   on ads: "If we overstated how many actual real people we have in certain demos, there is no

7   question that impacted budget allocations." And Meta admitted increased advertiser spending

8   results in higher prices for all advertisers, because when advertisers increase their budgets, "it's

9   probable that prices across all impressions will go up for everyone."

10   Plaintiffs will prove at trial that Meta misrepresented Potential Reach, concealed its fraud,

11   and that this fraud caused 11 million advertisers to overpay by billions of dollars.

II.   PLAINTIFFS' CLAIMS

A.   Fraudulent Misrepresentation

14   Under California law, to establish a claim for fraudulent misrepresentation, the Plaintiff

15   Class must prove, by a preponderance of the evidence, that: (1) Meta represented Potential Reach

16   to the Plaintiff Class; (2) that representation was false; (3) Meta knew that the representation was

17   false when Meta made it, or Meta made the representation recklessly and without regard for its

18   truth; (4) Meta intended that the Plaintiff Class rely on the representation in deciding how much

19   to spend on advertisements from Meta; (5) the Plaintiff Class reasonably relied on the

20   representation in deciding how much to spend on advertisements from Meta; (6) the Plaintiff Class

21   was harmed; and (7) the Plaintiff Class's reliance on the Meta's representation was a substantial

22   factor in causing that harm to the Plaintiff Class. *See* CACI 1900; *see, e.g., Graham v. Bank of*

23   *Am., N.A.,* 226 Cal. App. 4th 594, 605-06 (2014); *Engalla v. Permanente Med. Grp., Inc.*, 15 Cal.

24   4th 951, 974 (1997).

25   The evidence at trial will show that that Potential Reach was significantly inflated for all

26   advertisers because it was not calculated based on people, and that Meta knew that. Statistics expert

27   Dr. Charles Cowan will testify about the analysis he conducted using the Potential Reach rates of

28   inflation from Meta's own documents to determine to a statistical certainty that all Potential Reach

1   was inflated by an average of approximately 50% globally, and roughly 35-50% in the US. Source

2   code expert Dr. Atif Hashmi will explain that Meta calculated Potential Reach the same way for

3   all class member advertisers, and that it had deployed to the source code (but failed to activate)

4   tools that would have filtered out many of the fake and duplicate accounts. Plaintiffs will show

5   that Meta executives knew for years that Potential Reach was inflated because it counted accounts,

6   not people.

7   Advertisers were harmed and their reliance on Meta's Potential Reach misrepresentation

8   was a substantial element in causing that harm. Conjoint expert Dr. Greg Allenby will testify that

9   his conjoint survey demonstrated that inflated Potential Reach (due to Potential Reach being

10   calculated based on accounts rather than people) increased the aggregate demand among

11   advertisers. Auction expert Dr. Timonthy Roughgarden will testify about how that change in

12   aggregate demand, in turn, increases the price for all advertisers. And economics expert Dr.

13   Armando Levy will explain the increase in price yields aggregate damages for all advertisers in

14   the class, while taking supply and demand into account. In short, Plaintiffs will show that Meta's

15   Potential Reach misrepresentation caused advertisers to overpay for ads in the aggregate, thereby

16   harming them. Plaintiffs will also show that evidence of Meta's fraud is clear and convincing, such

17   that punitive damages are warranted under the law. *See* Cal. Civ. Code § 3294; CACI No. 3940.

18   **B.   Fraudulent Concealment**

19   Under California law, to establish a claim for fraudulent concealment, Plaintiffs must

20   prove, by a preponderance of the evidence, that: 1) Meta intentionally failed to disclose that

21   because the number of unique accounts exceeded the number of unique people, Potential Reach

22   was inflated, and that this fact was known only to Meta, and Class members could not have

23   discovered it; 2) Class members did not know Potential Reach was inflated; 3) Meta intended to

24   deceive Class members by concealing the fact that Potential Reach was inflated; 4) had Potential

25   Reach inflation been disclosed, Class members reasonably would behaved differently in deciding

26   how much to spend on advertisements from Meta; 5) Class members were harmed; and Meta's

27   concealment was a substantial factor in causing Class members harm. *See* CACI 1901; *see, e.g.,*

28

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1   *Bank of Am. Corp. v. Superior Ct. of L.A. Cnty.,* 198 Cal. App. 4th 862, 870 (2011); *Warner Constr.*

2   *Corp. v. City of L.A.*, 2 Cal. 3d 285, 294 (1970).

3   Plaintiffs will show that Potential Reach was inflated because it counted accounts instead

4   of people, through documentary evidence and expert testimony. The evidence will show that at no

5   point did Meta disclose information from its internal documents that Potential Reach was always

6   inflated because it counted accounts instead of people. Class representatives will also testify that

7   they, like other Class members, did not know that Potential Reach was inflated.

8   The evidence will show that Meta intended, and reasonably expected, that Class members

9   would rely on Meta's false representations about Potential Reach to spend more money on

10 advertisements from Meta than they otherwise would have. As discussed above, Dr. Allenby's

11 testimony will show that had Potential Reach inflation (due to Potential Reach being calculated

12 based on accounts rather than people) been disclosed, Class members would have spent less on

13 advertisements. Similarly, Plaintiffs will also testify that had they known the truth about Potential

14 Reach they would have spent less money, if any at all, on Facebook ads. As discussed above, the

15 evidence will show that Meta's concealment was a substantial factor in causing that harm to the

16 plaintiff Class. And again, Plaintiffs will show that Meta's fraud was so clear, that punitive

17 damages are appropriate.

18 **III.   DEFENDANTS' DEFENSES**

19   Meta argues that Potential Reach was an estimate and that its fine-print disclosures stating

20 it was an estimate were sufficient for the Plaintiff Class to know that Potential Reach was filled

21 with fake and duplicate accounts. The evidence at trial will show otherwise.

22   Relying primarily on the testimony of its marketing professor expert Dr. Catherine Tucker,

23 Meta contends Class representatives and the Class did not rely on Potential Reach to set their

24 budgets. It also points to isolated data points from the class representatives' ad purchases in an

25 attempt to show a lack of reliance. The evidence at trial, including the class representatives'

26 testimony and expert testimony, will prove otherwise.

27   Meta argues that there was no harm to the Plaintiff Class because they only paid for the

28 ads that ran, based on clicks or impressions—not on Potential Reach. Plaintiffs will show that

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1   Potential Reach was inflated because it counted accounts instead of people, thus raising the ad

2   prices for all advertisers and harming all Class Members.

3   Finally, Meta seeks a jury instruction on the affirmative defense of unclean hands as to

4   Plaintiff DZ Reserve on the grounds that it allegedly "violated Meta's Terms of Use by purchasing

5   advertisements through others' accounts." This defense is unavailing. "To establish unclean hands,

6   a defendant must demonstrate (1) inequitable conduct by the plaintiff; (2) that the plaintiff's

7   conduct directly relates to the claim which it has asserted against the defendant; and (3) plaintiff's

8   conduct injured the defendant." *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 518 F.

9   Supp. 2d 1197, 1223 (C.D. Cal. 2007) (internal citation omitted). Meta can satisfy none of these

10 elements. First, DZ Reserve's alleged purchase of advertisements is not conduct courts have held

11 can support a defense of unclean hands. Second, there is no relationship between a customer's

12 purchase of advertisements and the fraudulent misrepresentations for which Meta stands trial.

13 Third, Meta was not injured by the alleged purchase of advertisements on its platforms; to the

14 contrary, Meta profited from it.

15 **IV.   CONCLUSION**

16   The evidence at trial will show that judgment should be entered for Plaintiffs on all their

17 claims and that compensatory and punitive damages are warranted.

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19 Dated: September 4, 2025   Respectfully Submitted,

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