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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SUSAN LLOYD,
Plaintiff,
v.
FACEBOOK, INC., et al.,
Defendants.

Case No. [21-cv-10075-EMC](#)

**ORDER GRANTING DEFENDANTS’
MOTION TO DISMISS THIRD
AMENDED COMPLAINT**

Docket No. 46

I. INTRODUCTION

Pro se plaintiff Susan Lloyd (“Plaintiff”) brings this action against Defendants Facebook, Inc., Meta Platforms Inc., and Mark Zuckerberg (collectively “Defendants”), alleging various violations of the Americans with Disabilities Act (“ADA”), the Rehabilitation Act, the Unruh Act, as well as for fraud, intentional misrepresentation invasion of privacy, breach of contract, negligence, and negligent infliction of emotional distress. Previously, the Court dismissed Plaintiff’s breach of contract claim with leave to amend, and dismissed all other claims without leave to amend. *See* Docket No. 41 (“MTD Order”). Despite the Court’s order, Plaintiff has replead all dismissed claims in her Third Amended Complaint. *See* Docket No. 42 (“TAC”).¹ Plaintiff has also failed to amend her breach of contract claim. *Id.* Accordingly, the Court **GRANTS** Defendants’ motion to dismiss.

¹ Plaintiff filed a Second Amended Complaint before the Court ruled on Plaintiff’s First Amended Complaint. *See* Docket No. 30. Because the Court dismissed Plaintiff’s First Amended Complaint with leave to amend, the Second Amended Complaint is moot. Accordingly, this order addresses Plaintiff’s Third Amended Complaint.

1 **II. BACKGROUND**

2 A. Factual Background

3 Plaintiff alleges as follows in the Third Amended Complaint (“TAC”):

4 Plaintiff is a Pennsylvania resident with “severe vision issues” who has qualified as
5 disabled under the ADA since 2006. TAC ¶ 5. Lloyd uses the Facebook platform, an online
6 social media and networking service owned by Meta. *Id.* ¶ 6. Meta is a multinational technology
7 conglomerate and the parent organization of Facebook, Instagram, and other subsidiaries. *Id.* ¶ 7.
8 Meta collects revenue through the Facebook platform by using third-party advertisements. *Id.* ¶ 8.
9 Mr. Zuckerberg is the Co-Founder and CEO of Meta and also serves as Meta’s Chairman and
10 Controlling Shareholder. *Id.*

11 1. The Facebook Platform

12 According to Plaintiff, the Facebook platform is not accessible to disabled individuals with
13 no arms or problems with vision because of the following reasons:

- 14 (1) The font cannot be made larger,
- 15 (2) The platform cannot be viewed in both landscape and portrait
orientations,
- 16 (3) The color combinations are not high contrast enough to be
used by individuals with vision impairments,
- 17 (4) The text cannot be resized or readable when resized,
- 18 (5) The form fields do not have visible labels,
- (6) Users are not made aware of missing, incorrect, or other errors
entered into fields,
- (7) Gifs and videos cannot be disabled to prevent seizures,
- 19 (8) Language tabs are not added,
- 20 (9) There is only an option to do dark mode or make the font
smaller, and
- 21 (10) There is no accessibility statement.

22 *See id.* ¶ 10.

23 Plaintiff further claims that Defendants track her use of third party websites, such as
24 Chewy.com or Target.com, without obtaining her permission even when she is logged off
25 Facebook. *Id.* ¶¶ 30–31. According to Plaintiff, she is aware of this alleged tracking because
26 advertisements from these sites immediately appear for her on Facebook after visiting them. *Id.*
27 ¶¶ 30–32. Meta’s relationship with the users—including Plaintiff—is governed by its Terms of
28 Service (formerly known as Statement of Rights and Responsibilities), to which all users must

1 agree to create a Facebook account.²

2 2. Third-Party Harassment

3 Plaintiff alleges that Defendants have allowed “over 500 people to harass and bully
4 [Plaintiff] on Facebook, led by Joshua Thornsbery” since 2016. *Id.* ¶ 23. Thornsbery and his
5 friends, many of whom are from motorcycle gangs including the Hells Angels, do not use their
6 real names, create multiple accounts, share passwords and “have testified that they give. . . other
7 people. . . [access to] their accounts.” *Id.* For over five years, these individuals threatened to rape
8 and murder Plaintiff by shooting her with a gun, choking her to death, and blowing up her house.
9 *Id.* Yet, “each time they have been reported, [Plaintiff] and others were told it does not violate
10 community standards.” *Id.*

11 Plaintiff also alleges that Defendants allowed Thornsbery and his friends to post Lloyd’s
12 personal information, such as her address, her photos, and photos of her property, among other
13 things, so that others know where she lives and can harass her. *Id.* Her harassers allegedly “even
14 post that they will sit in front of Lloyds house to harass Lloyd.” *Id.* In addition, Plaintiff alleges
15 that Defendants allow the harassers to “brag on Facebook that they pissed on Lloyd[’]s fence,
16 damaged Lloyds fence, blow cigarette smoke at Lloyd while she is on oxygen, post pictures of
17 Lloyds cameras and state how the[y] can get around Lloyds security systems and how they can use
18 signal jammers to block Lloyd’s cameras which they did, forcing Lloyd to reinstall wired
19 cameras.” *Id.* Because many of the harassers are members of the Hells Angels, Plaintiff alleges
20 that Defendants “allow[] the Hells Angels to have pages on their site where the[y] can organize
21 and have gatherings” and threaten to have “the Hells Angels murder Lloyd.” *Id.*

22 “Thornsbery. . . admits to hacking into Lloyds Facebook page and found out where Lloyd
23 is residing in the state of Pennsylvania where he admits to still having well over 500 of his friends
24 organized through Facebook to harass Lloyd.” *Id.* Because of this harassment, Lloyd fled to Ohio
25 for her safety. *Id.* ¶ 24.

26 _____
27 ² According to the Terms of Service, users impliedly agree to the Terms of Service by using the
28 Facebook platform. *See* Docket No. 19, Ex. A (Facebook Terms of Service) (“We hope that you
will continue using our Products, but if you do not agree to our updated Terms and no longer want
to be a part of the Facebook community, you can delete your account at any time.”).

1 **III. LEGAL STANDARD**

2 A. **Failure to State a Claim (12(b)(6))**

3 Federal Rule of Civil Procedure 8(a)(2) requires a complaint to include “a short and plain
4 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A
5 complaint that fails to meet this standard may be dismissed pursuant to Rule 12(b)(6). *See* Fed. R.
6 Civ. P. 12(b)(6). To overcome a Rule 12(b)(6) motion to dismiss after the Supreme Court’s
7 decisions in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atlantic Corporation v. Twombly*, 550
8 U.S. 544 (2007), a plaintiff’s “factual allegations [in the complaint] ‘must . . . suggest that the
9 claim has at least a plausible chance of success.’” *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1135 (9th
10 Cir. 2014). The court “accept[s] factual allegations in the complaint as true and construe[s] the
11 pleadings in the light most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire &*
12 *Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). But “allegations in a complaint . . . may not
13 simply recite the elements of a cause of action [and] must contain sufficient allegations of
14 underlying facts to give fair notice and to enable the opposing party to defend itself effectively.”
15 *Levitt*, 765 F.3d at 1135 (quoting *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d
16 990, 996 (9th Cir. 2014)). “A claim has facial plausibility when the Plaintiff pleads factual
17 content that allows the court to draw the reasonable inference that the Defendant is liable for the
18 misconduct alleged.” *Iqbal*, 556 U.S. at 678. “The plausibility standard is not akin to a
19 ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted
20 unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 556).

21 **IV. ANALYSIS**

22 A. **Replead Claims**

23 As a preliminary matter, the Court dismisses Plaintiff’s claims against Defendant, as well
24 as against Meta CEO Mark Zuckerberg (“Zuckerberg”), for violations of the ADA, the
25 Rehabilitation Act, the Unruh Act, fraud, intentional misrepresentation, invasion of privacy,
26 negligence, and negligent infliction of emotional distress. In the last dismissal order, the Court
27 solely granted Plaintiff leave to amend the breach of contract claim. *See* MTD Order. Excepting
28 Plaintiff’s breach of contract claim, all replead claims are therefore outside the scope of the

1 amendment permitted by the prior dismissal order. *See id.* “When a district court grants leave to
2 amend for a specified purpose, it does not thereafter abuse its discretion by dismissing any
3 portions of the amended complaint that were not permitted.” *Corrales v. Vega*, No. ED CV 12-
4 01876 JVS R, 2015 WL 575961, at *3 (C.D. Cal. Feb. 7, 2015) (citing *United States ex rel.*
5 *Atkinson v. Pennsylvania Shipbuilding Co.*, 473 F.3d 506, 524 (3d Cir. 2007)); *see also King v.*
6 *Facebook Inc.*, No. 21-CV-04573-EMC, 2022 WL 1188873 (N.D. Cal. Apr. 20, 2022); *In re*
7 *Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 536 F. Supp. 2d 1129 (N.D. Cal.
8 2008).

9 Furthermore, as noted in the prior order, there are merit-based reasons to dismiss Plaintiff’s
10 claims against Defendant and Zuckerberg for violations of the ADA, the Rehabilitation Act, the
11 Unruh Act, fraud, intentional misrepresentation, invasion of privacy, negligence, and negligent
12 infliction of emotional distress.³

13 First, Plaintiff’s ADA and Rehab Act claims fail because Facebook is not a place of public
14 accommodation under Federal law. *See, e.g., Young v. Facebook, Inc.*, 790 F. Supp. 2d 1110,
15 1115 (N.D. Cal. 2011) (holding “places of public accommodation” are limited to “actual physical
16 spaces”) (citing *Weyer v. Twentieth Century Fox Film*, 198 F.3d 1104, 1114 (9th Cir. 2000)).
17 These Acts only apply to websites in the rare circumstances where there is some connection or
18 nexus “between the good or service complained of and an actual physical place.” *Weyer*, 198 F.3d
19 at 1114. This nexus requirement is only met where a website’s “inaccessibility impedes [the
20 plaintiff’s] access to the services of the defendant’s physical office.” *Gomez v. Gates Ests., Inc.*,
21 No. C-21-7147 WHA, 2022 WL 458465, at *4 (N.D. Cal. Feb. 15, 2022); *see, e.g., Robles v.*
22 *Domino’s Pizza, LLC*, 913 F.3d 898, 905 (9th Cir. 2019) (finding a nexus between Domino’s
23 website and the physical pizza franchises because customers use the website to find nearby
24 restaurants and order pizzas). Plaintiff’s Unruh Act claim fails because the Act does not apply to
25

26 ³ At the hearing, Plaintiff argued that her Second Amended Complaint (“SAC”) addressed the
27 substantive issues with these claims. As noted, the Court did not consider the SAC because it was
28 filed before disposition on the First Amended Complaint. Nonetheless, even if the Court had
considered Plaintiff’s SAC, its decision would remain the same as Plaintiff’s SAC and TAC are
identical.

1 digital-only websites such as Facebook. *Martinez v. Cot'n Wash, Inc.*, 81 Cal. App. 5th 1026,
2 1039 (2022), *review denied* (Nov. 9, 2022) (concluding that the Unruh Act does not apply to
3 digital-only websites); *see also Earll v. eBay, Inc.*, 599 F. App'x 695 (9th Cir. 2015).

4 Second, Plaintiff's fraud and intentional misrepresentation claims fail because she fails to
5 cite any specific instances of fraud or allege any facts supporting a reasonable inference that
6 Facebook intended to defraud Plaintiff. Plaintiff merely discusses Facebook's Terms of Service
7 and alleges that "[a]ll of the above is fraudulent and intentional misrepresentation by the
8 Defendants" which "Defendants intended Lloyd to rely on[.]" TAC ¶¶ 23–25. Plaintiff fails to
9 comply with Fed. R. Civ. P. 9(b).

10 Third, Plaintiff's claims for invasion of privacy, negligence, and negligent infliction of
11 emotional distress fail because they are barred by Section 230 of the Communications Decency
12 Act. *See Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1099 (9th Cir. 2009) (holding that Section 230
13 bars any "activity that can be boiled down to deciding whether to exclude material that third
14 parties seek to post online").

15 Lastly, Plaintiff's direct claims against Zuckerberg fail because she does not adequately
16 allege that Zuckerberg was personally involved or directed the challenged acts as required by the
17 "alter ego" theory put forth. *See Twombly*, 550 U.S. at 570; *see also Brock v. Zuckerberg*, 2021
18 WL 2650070, at *4 (S.D.N.Y. June 25, 2021) (dismissing claims against Mr. Zuckerberg when the
19 plaintiff failed to allege any facts "connecting Zuckerberg. . . to [their] claims").

20 Accordingly, the Court **GRANTS** Defendants' motion to dismiss Plaintiff's claims for
21 violations of the ADA, the Rehabilitation Act, the Unruh Act, fraud, invasion of privacy,
22 negligence, and negligent infliction of emotional distress.

23 **B. Breach of Contract**

24 1. Diversity Jurisdiction

25 Defendants argue the Court lacks diversity jurisdiction over Plaintiff's contract claim
26 because she cannot meet the amount in controversy. Mot. 10–11.

27 28 U.S.C. §1332 grants federal courts' original jurisdiction over civil actions where the
28 amount in controversy exceeds \$75,000 and the parties are citizens of different states. 28

1 U.S.C.A. § 1332. Courts generally accept a plaintiff’s good-faith allegation in assessing the
2 amount in controversy unless it appears to a “legal certainty” that the plaintiff cannot recover the
3 statutory amount. *See Naffe v. Frey*, 789 F.3d 1030, 1039–40 (9th Cir. 2015).

4 Plaintiff’s claim for breach of contract is based on conduct of third-party users. TAC ¶¶
5 38–40. Facebook’s Terms of Service disclaim all liability for third-party conduct. *See* Docket
6 No. 19, Ex. A (“TOS”). The TOS also provide, “aggregate liability arising out of...the [TOS] will
7 not exceed the greater of \$100 or the amount Plaintiff has paid Meta in the past twelve months.”
8 *Id.* (alterations to original). Finally, the TOS precludes damages for “lost profits, revenues,
9 information, or data, or consequential, special indirect, exemplary, punitive, or incidental
10 damages.” *Id.* Thus, there is a “legal certainty” that Plaintiff cannot meet the required amount in
11 controversy of \$75,000. *See Frey*, 789 F.3d at 1039–40.

12 Accordingly, the Court **GRANTS** Defendants’ motion to dismiss because it lacks
13 jurisdiction. The Court expresses no opinion on whether Plaintiff may pursue her contract claim
14 in state court.

15 **V. CONCLUSION**

16 For the foregoing reasons, the Court **GRANTS** Defendants’ motion to dismiss without
17 leave to amend.

18 This order disposes of Docket No. 46. The Clerk is instructed to enter judgment and close
19 the case.

20
21 **IT IS SO ORDERED.**

22
23 Dated: February 7, 2023

24
25 

26 EDWARD M. CHEN
27 United States District Judge
28