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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 CHRISTOPHER CALISE, et al.,
8 Plaintiffs,
9 v.
10 META PLATFORMS, INC.,
11 Defendant.

Case No. 21-cv-06186-JSW

**ORDER GRANTING MOTION TO
DISMISS**

Re: Dkt. No. 20

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13 Now before the Court for consideration is the motion to dismiss filed by Defendant Meta
14 Platforms, Inc. (“Meta”), formerly known as Facebook, Inc.¹ The Court has considered the
15 parties’ papers, relevant legal authority, and the record in the case, and it finds the matter suitable
16 for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b). For the following reasons, the
17 Court GRANTS Meta’s motion.

18 **BACKGROUND**

19 Plaintiffs Anastasia Groschen (“Groschen”) and Christopher Calise (“Calise”)
20 (collectively, “Plaintiffs”) bring this suit seeking to hold Meta liable for allegedly deceptive
21 advertisements posted to the platform by third parties. Plaintiffs allege Meta actively solicits,
22 encourages, and assists scam advertisers and Meta knows, or should know, that the scammers use
23 its platform to defraud users with deceptive ads. (Compl. ¶ 1.)

24 Meta provides a social networking service that allows people to connect and communicate
25 with friends, colleagues, family, and others. (*Id.* ¶ 19.) Meta does not charge users for their
26 accounts and instead generates revenue from a variety of other products and services, including

27
28 ¹ The case caption was amended on November 15, 2021, to reflect that Facebook, Inc. changed its name to Meta Platforms, Inc. (Dkt. No. 34.)

1 advertisements displayed on users’ accounts. (*Id.* ¶¶ 20-21.) Meta allows advertisers to run
2 targeted ad campaigns on the platform. (*Id.*) Advertisers must comply with Facebook’s Terms of
3 Service, which prohibit violent, criminal, fraudulent, or deceptive conduct. (*Id.* ¶ 30.) Meta also
4 has policies specific to advertisers, which prohibit advertisements that contain deceptive, false, or
5 misleading claims. (*Id.* ¶ 31.)

6 Plaintiffs are Facebook users who saw third-party advertisements on Facebook and
7 purchased the advertised products from third-party websites. Plaintiff Groschen saw an
8 advertisement for a toddler activity board on Facebook. (*Id.* ¶ 66.) When Groschen clicked the
9 ad, she was taken to a website with the domain name “kidspunza.com”, and she purchased the
10 activity board from the website. (*Id.* ¶¶ 67-68.) When the package arrived from Kidspunza, it
11 contained a “cheap wooden ‘ABC’ puzzle” instead of the activity board pictured on the website.
12 (*Id.* ¶ 70.) Groschen unsuccessfully attempted to obtain a refund from the vendor. (*Id.* ¶ 75.) She
13 alleges that other Facebook users were similarly deceived by Kidspunza advertisements on
14 Facebook. (*Id.* ¶ 76.)

15 Plaintiff Calise saw an advertisement on Facebook for a car engine assembly kit. (*Id.* ¶
16 81.) Calise followed the advertisement to a website with the domain name “miuxo.com” where he
17 purchased the car engine assembly kit. (*Id.* ¶ 82.) After he placed the order and paid for the kit,
18 Calise attempted to contact Miuxo for updates on the status of his order. (*Id.* ¶ 83.) Miuxo did not
19 respond, and Calise never received the kit or a refund. (*Id.*) Calise reported Miuxo’s
20 advertisement to Facebook, which determined the advertisement violated its ad polices and would
21 be removed. (*Id.* ¶ 85.) Calise alleges, however, that Miuxo launched a new Facebook
22 advertisement under a slightly modified name, which scammed additional Facebook users. (*Id.* ¶¶
23 85-86.)

24 Plaintiffs seek to hold Meta liable for the deceptive advertisements. They bring causes of
25 action for: (1) negligence; (2) breach of contract; (3) breach of the covenant of good faith and fair
26 dealing; (4) violations of California’s Unfair Competition Law, Cal. Bus. & Prof. Code section
27 17200, *et seq.* (“UCL”); and (5) unjust enrichment. Plaintiffs seek monetary and injunctive relief.

28 Meta moves to dismiss on two bases. First, that Section 230(c)(1) of the Communications

1 Decency Act (“CDA”) bars Plaintiffs’ claims. Second, Meta contends that Plaintiffs fail to state a
2 cause of action for each of their individual claims.

3 ANALYSIS

4 **A. Applicable Legal Standard.**

5 A motion to dismiss is proper under Federal Rule of Civil Procedure 12(b)(6) where the
6 pleadings fail to state a claim upon which relief can be granted. A court’s “inquiry is limited to
7 the allegations in the complaint, which are accepted as true and construed in the light most
8 favorable to the plaintiff.” *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008). Even
9 under the liberal pleading standard of Federal Rule of Civil Procedure 8(a)(2), “a plaintiff’s
10 obligation to provide ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and
11 conclusions, and formulaic recitation of the elements of a cause of action will not do.” *Bell Atl.*
12 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).
13 Pursuant to *Twombly*, a plaintiff cannot merely allege conduct that is conceivable but must instead
14 allege “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. “A claim
15 has facial plausibility when the plaintiff pleads factual content that allows the court to draw the
16 reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*,
17 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556).

18 If the allegations are insufficient to state a claim, a court should grant leave to amend
19 unless amendment would be futile. *See, e.g., Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th
20 Cir. 1990); *Cook, Perkiss & Liehe, Inc.*, 911 F.2d at 246-47.

21 **B. Section 230 Bars Plaintiffs’ Claims.**

22 Section 230 of the CDA provides that “[n]o provider or user of an interactive computer
23 service shall be treated as the publisher or speaker of any information provided by another
24 information content provider.” 47 U.S.C. § 230(c)(1). “Immunity from liability exists for ‘(1) a
25 provider or user of an interactive computer service (2) whom a plaintiff seeks to treat, under a state
26 law cause of action, as a publisher or speaker (3) of information provided by another information
27 content provider.’” *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1097 (9th Cir. 2019)
28 (quoting *Barnes v. Yahoo! Inc.*, 570 F. 3d 1096, 1100-01 (9th Cir. 2009)). “In general, this section

1 protects websites from liability for material posted on the website by someone else.” *Doe v.*
2 *Internet Brands, Inc.*, 824 F.3d 846, 850 (9th Cir. 2016).

3 The parties do not dispute Meta is an interactive computer service provider, and the Court
4 agrees. *Dyroff*, 934 F.3d at 1097 (“Websites are the most common interactive computer
5 services.”) Additionally, neither party disagrees that third parties created the content in question.
6 Thus, the focus of Plaintiffs’ argument is that Meta should be treated as the “publisher or speaker”
7 of the third-party ad content. Plaintiffs argue that Meta is not entitled to Section 230 immunity
8 because it actively solicits and encourages third-party advertisers it knows or should know are
9 scammers to advertise on its platform and this encouragement deprives Meta of immunity.

10 The Ninth Circuit has held that a website that “create[es] or develop[s]” content “by
11 making a material contribution to [its] creation or development” loses section 230 immunity.
12 *Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1269 (9th Cir. 2016). A “material contribution” does not
13 refer to “merely...augmenting the content generally, but to materially contributing to its alleged
14 unlawfulness.” *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d
15 1157, 1167-68 (9th Cir. 2008). This test “draw[s] the line at the ‘crucial distinction between, on
16 the one hand, taking actions” to display “actionable content and, on the other hand, responsibility
17 for what makes the displayed content [itself] illegal or actionable.” *Kimzey*, 836 F.3d at 1269 n.4
18 (internal quotation marks omitted) (quoting *Jones v. Dirty World Ent. Recordings LLC*, 755 F.3d
19 398, 413–14 (6th Cir. 2014)). That is, immunity will be lost only when the website contributes to
20 the illegality of the third-party content. *Roommates*, 521 F.3d at 1167-68.

21 In *Dyroff*, the plaintiff sued a website after her son died from illegal drugs that he
22 purchased from a dealer on the website. 934 F.3d at 1094-95. The plaintiff argued that the
23 website was not immune under Section 230 because it knew or should have known that some of its
24 users were selling drugs on the site. *Id.* at 1099-1100. The Ninth Circuit disagreed and held that
25 Section 230 immunized the defendant because the plaintiff did not allege that the website
26 “required users to post specific content, made suggestions regarding the content of potential user
27 posts, or contributed to making unlawful or objectionable user posts” and thus, it had not
28 materially contributed to the illegality of the posted content. *Id.* at 1099.

1 As in *Dyroff*, Plaintiffs’ allegations here do not establish that Meta materially contributed
2 to the illegality of the specific advertisements in question. Plaintiffs do not plead that Meta
3 required advertisers to post specific content, made suggestions about the content of the ads, or
4 played a role in creating the unlawful ads. Nor do Plaintiffs allege that Meta directly participated
5 in the allegedly fraudulent purchase transactions, which took place on third-party websites. Thus,
6 the allegations do not show Meta is responsible for the actionable content. At most, Plaintiffs’
7 allegations establish that Meta encouraged and solicited third parties to advertise on its platform.
8 But the fact that Meta cultivates relationships with advertisers and encourages them to post on its
9 platform does not transform Meta into the creator of the allegedly illegal ad content. *See*
10 *Roommates*, 521 F.3d at 1174 (“Where it is very clear that the website directly participates in
11 developing the alleged illegality...immunity will be lost.”). Plaintiffs fail to allege facts that show
12 Meta contributed to the illegality of the challenged advertisements, and thus Meta is entitled to
13 Section 230 immunity. *See Goddard v. Google, Inc.*, 640 F. Supp. 2d 1193 (N.D. Cal. 2009)
14 (finding Google entitled to Section 230 immunity in connection with fraudulent advertisements
15 that appeared on its search engine).

16 Plaintiffs also argue that Section 230 immunity does not apply because Meta fails to
17 remove fraudulent ads and enforce its ad policies. However, Meta cannot be held liable under
18 Section 230 for its decisions not to remove third-party content. *See Roommates*, 521 F.3d at 1170
19 (explaining that “determin[ing] whether or not to prevent [the] posting” of third-party material
20 online is “precisely the kind of activity” covered by the CDA); *Caraccioli v. Facebook, Inc.*, 700
21 F. App’x 588, 590 (9th Cir. 2017) (“Facebook did not become the ‘information content provider’
22 under § 230(c)(1) merely by virtue of reviewing the contents of the suspect account and deciding
23 not remove it.”). Moreover, numerous courts have rejected the argument that an interactive
24 service provider loses Section 230 immunity if it fails to adequately enforce its ad policies. *See*
25 *Goddard v. Google, Inc.*, No. C 08-2738-JF, 2008 WL 524590, at *3 (N.D. Cal. Dec. 17, 2008)
26 (“[E]ven if a service provider knows that third parties are using such tools to create illegal content,
27 the service provider’s failure to intervene is immunized.”) (citing *Roommates*, 521 F.3d at 1169
28 n.24.); *see also Ripple Labs Inc. v. YouTube LLC*, No. 20-2747-LB, 2020 WL 6822891, at *2, 7

1 (N.D. Cal. 2020) (finding defendant entitled to Section 230 immunity even though it failed to take
2 down allegedly fraudulent channels after being notified of a scam). Thus, Meta's purported failure
3 to remove fraudulent advertisements or enforce its advertising policies does not overcome Section
4 230's protections.

5 Finally, Plaintiffs contend that, at the very least, Section 230 does not immunize Meta from
6 their contract claim. Section 230 immunity does not apply to contract claims that do not derive
7 from a defendant's status or conduct as a publisher or speaker. *In re Zoom Video Commc'ns Inc.*
8 *Priv. Litig.*, 525 F. Supp. 3d 1017, 1034 (N.D. Cal. 2021) (citing *Barnes*, 570 F.3d at 1102). Here,
9 however, Plaintiffs' contract claim is based on Meta's alleged solicitation and publication of
10 deceptive third-party advertisements and therefore stems from Meta's role as publisher. (*See*
11 *Compl.* ¶¶ 113-115.) Thus, Section 230 immunity extends to Plaintiffs' contract claim in this
12 action. *See Goddard*, 2008 WL 5245490, at *2 (“[Section] 230's ‘broad immunity’ extends to ‘*all*
13 *claims stemming from* [an interactive service provider's] publication of information created by
14 third parties.”) (quoting *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008).

15 Here, because all of Plaintiffs' claims are premised on Meta's publication of the third-party
16 advertisements, the Court concludes that Meta is entitled to CDA immunity as to each of
17 Plaintiffs' claims. Because the Court finds Meta entitled to immunity under Section 230 of the
18 CDA, the Court does not address the parties' arguments regarding whether Plaintiffs plead
19 sufficient facts to state a claim under Rule 12(b)(6).

20 Although it seems unlikely under the facts currently pled, it is possible that Plaintiffs could
21 allege that Meta's conduct goes beyond mere publication. For example, if Plaintiffs could
22 establish that Meta was involved in creating or developing the allegedly illegal ad content, Section
23 230 immunity might not apply. Thus, because the Court cannot say amendment would be futile, it
24 will grant Plaintiffs leave to amend.

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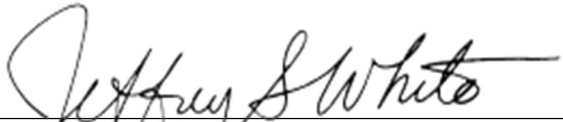
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CONCLUSION

For the foregoing reasons, the Court GRANTS Meta’s motion to dismiss with leave to amend. Plaintiffs shall file any amended complaint within twenty-one (21) days.

IT IS SO ORDERED.

Dated: April 27, 2022



JEFFREY S. WHITE
United States District Judge

United States District Court
Northern District of California

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