No. 26-996

IN THE
United States Court of Appeals for the Ninth Circuit

JOSEPH J. DEAN,
Plaintiff-Appellant,
v.

META PLATFORMS, INC., a Delaware corporation headquartered in Menlo Park, California, formerly known as Facebook Inc.
Defendant-Appellee.

On Appeal from the United States District Court for the Northern District of California
No. 5:25-cv-10597-NC, Hon. Nathanael M. Cousins

ANSWERING BRIEF FOR DEFENDANT-APPELLEE META PLATFORMS, INC.

Eric A. Shumsky
ORRICK, HERRINGTON & SUTCLIFFE LLP
2100 Pennsylvania Avenue, NW
Washington, DC 20037
(202) 339-8400

Nicholas González
ORRICK, HERRINGTON & SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94105
(415) 773-5700
ngonzalez@orrick.com

Jacob M. Heath
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
Menlo Park, CA 94025

Counsel for Meta Platforms, Inc.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 Meta Platforms, Inc. hereby states that it has no parent company, and no publicly held corporation owns 10% or more of its stock.

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ Nicholas González
Nicholas González

Counsel for Defendant-Appellee Meta Platforms, Inc.

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INTRODUCTION

This case fails at the threshold: There is no standing, and the claims come too late. Plaintiff-Appellant Joseph Dean is a self-styled software developer who, back in 2020, unsuccessfully tried to bring antitrust claims against Meta on behalf of his company, Veamcast Corp. When that district court explained that the lawsuit could not proceed unless Veamcast Corp. hired a lawyer to represent the company, Plaintiff instead waited years before bringing a new lawsuit substituting himself as the plaintiff.

In doing so, however, Plaintiff traded one problem for several. For one, Article III does not allow Plaintiff to sue for injuries allegedly suffered by the company. For another, this lawsuit is untimely. Plaintiff was on notice of the claim no later than 2019, but the statute of limitations is four years and he did not file his new suit until 2024. The court correctly held that each of these defects requires dismissal.

On the merits, too, this case is irremediably flawed. Plaintiff asserts antitrust claims under Section 3 of the Clayton Act and Section 2 of the Sherman Act, but each claim fails as a matter of law. First, both claims fail because the antitrust laws protect against conduct that

injures *competition*, not competitors, and Plaintiff seeks relief only for the latter. Second, the "exclusive dealing" claim under Section 3 of the Clayton Act fails because the record confirms that there is no exclusive dealing arrangement at issue here. And third, the "monopoly" claim under Section 2 of the Sherman Act fails as a matter of law because Plaintiff's antitrust theory is facially invalid.

The district court's judgment should be affirmed.

JURISDICTION

Meta agrees with Plaintiff's jurisdictional statement, except that Plaintiff lacks Article III standing. *Infra* § I.

STATEMENT OF THE ISSUES

1. For a plaintiff to have Article III standing, he must have suffered cognizable injury. Should the district court's judgment be affirmed because Plaintiff is suing for alleged injuries that only a separate corporate entity, Veamcast Corp., purportedly suffered?

2. The antitrust laws impose a four-year statute of limitations, which begins to run on the date of injury. Should the judgment be affirmed because Plaintiff alleges injuries that accrued in 2019 but did not file suit until 2024?

3. In the alternative, should the district court's judgment be affirmed because:

a. The antitrust laws authorize suits to vindicate only harms to competition, not competitors, and Plaintiff seeks to vindicate personal injuries rather than injuries to competition?

b. An exclusive dealing claim under Section 3 of the Clayton Act requires an exclusivity agreement and Plaintiff was under no exclusive agreement?

c. A monopoly claim under Section 2 of the Sherman Act requires alleging anticompetitive conduct, and Plaintiff purports to rely on lawful conduct for this claim?

STATEMENT OF THE CASE

Plaintiff, a non-lawyer, improperly sues Meta on behalf of his company, Veamcast Corp., for alleged antitrust violations and the suit is dismissed.

Plaintiff is the founder and CEO of Veamcast Corp., a Florida C-Corp.[1] *See* 2-SER-81-86. Veamcast Corp. purportedly develops "apps

[1] Plaintiff apparently incorporated another corporation called "Veamcast Corporation" at some point before "Veamcast Corp." Opening Brief ("OB") at 6. That corporation or any differences between these entities is not relevant here.

and an [application programming interface] API for a video/voice/photo publishing and sharing service" including an application (or "app") that also is called Veamcast. 2-SER-81.

Meta Platforms, Inc. operates Facebook, a service that allows users to connect, share, discover, and communicate with friends and communities. Meta also facilitates the ability of third-party app developers to create apps that interact with Facebook by allowing them access to its application programming interfaces ("APIs"). Plaintiff claims that the Veamcast app's functionality initially relied on access to Meta's APIs. 2-SER-198.

In 2020, Plaintiff filed a complaint on behalf of Veamcast Corp. against Facebook, Inc. (now known as Meta Platforms, Inc.) in the Middle District of Florida, which alleged violations of antitrust law. 2-SER-81-86. (We refer to this as the Veamcast Complaint, to distinguish it from the complaint at issue in this appeal.)

According to the Veamcast Complaint, by 2019 Meta had disabled the APIs on which the Veamcast app relied. 2-SER-81-82; Exhibits 1-3 to Complaint, *Veamcast Corp. v. Facebook, Inc.*, No. 8:20-cv-02667 (M.D. Fla. Nov. 12, 2020), ECF 1-1. The Veamcast Complaint alleged that the

disabling was anticompetitive in violation of the Clayton and Sherman Acts. 2-SER-84-85.

The magistrate judge recommended that the Veamcast Complaint be dismissed. *Veamcast Corp. v. Facebook, Inc.*, No. 8:20-cv-2667, 2020 WL 7248226, at *1 (M.D. Fla. Nov. 19, 2020). As the magistrate judge described it, the Veamcast Complaint was merely "an airing of grievances" insufficient to confer standing or to state a claim. *Id.* The magistrate judge also determined that Plaintiff, as a non-lawyer, could not represent Veamcast Corp. because "a corporation may appear in federal court only through counsel." *Id.* at *2.

The district court adopted the recommendation and granted Plaintiff 30 days to obtain counsel for Veamcast Corp. or 60 days to file an amended complaint alleging claims on his own behalf. *Veamcast Corp. v. Facebook, Inc.*, No. 8:20-cv-2667, 2020 WL 7238519 (M.D. Fla. Dec. 9, 2020). Plaintiff did neither, so the action was dismissed in early 2021. *See Veamcast Corp. v. Facebook, Inc.*, No. 8:20-cv-2667, ECF Nos. 7, 12 (Dec. 9, 2020) and (Feb. 8, 2021).

Years later, Plaintiff repackages the same allegations against Meta in his own name.

In 2024, Plaintiff filed a new lawsuit against Meta. *See Dean v. Meta Platforms, Inc.*, Case No. 24-cv-2242-MSS-TGW, 3-SER-295. The new lawsuit, also filed in the Middle District of Florida, alleged the same antitrust violations based on the same alleged events as the Veamcast Complaint, but this time was brought under Plaintiff's name rather than on behalf of Veamcast Corp. 3-SER-295.

Following his first amendment of the complaint, the magistrate judge recommended dismissal, finding the complaint "rambling and disorganized." 2-SER-256. But, recognizing Plaintiff's pro se status, the magistrate judge "permit[ted] [Plaintiff] to file a second amended complaint." 2-SER-258-259.

Plaintiff then filed the operative Second Amended Complaint ("SAC"). 2-SER-197-253. Like the Veamcast Complaint, the SAC alleges that Meta violated the antitrust laws when it disabled the APIs that Veamcast relied on. The SAC alleges that by 2019, the APIs, although they functioned "years prior," "no longer did and never did again" and that everything on Facebook that had been "created using Veamcast … ha[d] been deleted." 2-SER-232, 235. The SAC alleges

that disabling these APIs violates Section 2 of the Sherman Act and Section 3 of the Clayton Act, and seeks a minimum of $400 million in damages and other relief. 2-SER-215-216.

Plaintiff's lawsuit is transferred to California, and the district court dismisses it on multiple independent grounds.

Meta moved to transfer the lawsuit to the Northern District of California and to dismiss the SAC. 2-SER-143-183. The Florida district court granted the motion to transfer. 2-SER-87-95.

In California, Meta refiled its motion to dismiss. *See* 2-SER-56-86. As a threshold matter, Meta explained that Plaintiff's new lawsuit runs afoul of Article III because it is an improper effort to sue for injuries suffered (if at all) by Veamcast Corp., not by Plaintiff. 2-SER-68-71. In addition, Plaintiff's suit is time-barred because Plaintiff's injuries accrued no later than 2019 and he waited to file until 2024, outside the four-year statute of limitations for antitrust claims, and similarly barred by laches. 2-SER-71-73. Moreover, Plaintiff's antitrust claims fail to state a claim for multiple reasons, including due to the lack of antitrust injury. 2-SER-74-78.

The district court agreed with Meta, explaining that Plaintiff lacks Article III standing because Plaintiff "does not allege any concrete

injury to himself, rather than to Veamcast"; that his claims are untimely because any "alleged injury occurred as early as 2018 or July 2019" and barred by laches; that he lacks antitrust injury; and that his antitrust claims fail on the merits. 1-SER-5-9. The district court also noted that this was not "Plaintiff's first attempt to bring [his] allegations." 1-SER-9. Rather, Plaintiff had "multiple attempts to bring [his] claims against [Meta] and failed to do so." 1-SER-9. The district court accordingly denied leave to amend, finding it "would be futile," and entered judgment for Meta. 1-SER-9.[2]

Plaintiff appealed.

SUMMARY OF ARGUMENT

I. This case fails at the threshold both because Plaintiff lacks Article III standing and because his claims are time-barred. Plaintiff has no standing because he alleges no injury to himself, only injuries to

[2] Plaintiff also brought a similar lawsuit against Roku, Inc. in Florida. *See Dean v. Roku, Inc.*, No. 8:24-cv-02383, 2025 WL 2299403 (M.D. Fla. Aug. 8, 2025), appeal docketed, No. 25-12890 (11th Cir. Aug. 25, 2025). There, as here, Plaintiff initially sought to sue Roku on behalf of Veamcast Corp. pro se, and rather than obtain counsel for Veamcast, repurposed the allegations to sue on his own behalf. *Id.* at *1. The district court there also dismissed that lawsuit on multiple grounds, several of which mirror the district court's correct analysis here. *Id.* at *4-5.

the company for which he is CEO. Plaintiff nowhere alleges harms that are distinct from his company's, and the fact that he attempted to sue previously for these injuries on behalf of his company reinforces that the alleged injuries here are not his but his company's.

Plaintiff's claims are also time-barred. His antitrust claims are based on actions that Meta allegedly took and completed no later than 2019, yet Plaintiff did not file this suit until 2024, too late to satisfy the four-year statute of limitations that applies to his claims.

Plaintiff's attempts to get around the statute of limitations via the fraudulent concealment and continuing-violation doctrines each fail. The fraudulent concealment doctrine is of no help to him because it requires concealment and ignorance of the relevant facts. But Plaintiff's own SAC makes clear that he was aware of the facts underlying his claims no later than 2019—indeed, Exhibit C attached to the SAC shows that, in 2019 correspondence with Meta, he even referenced potentially hiring a lawyer in response to Meta's alleged conduct. 2-SER-238. As such, he cannot allege any concealment by Meta because there was none. Plaintiff's attempt to invoke the continuing-violation doctrine fails too, as he cannot allege any new and

independent overt act that inflicts new injury. The SAC makes clear that Plaintiff's alleged injury fully ripened no later than 2019, when he alleges the API functionalities upon which the Veamcast app relied were permanently disabled. 2-SER-225-243.

II. Even if Plaintiff could get past his Article III standing and untimeliness issues, the district court's judgment should still be affirmed. At the threshold, Plaintiff's antitrust claims fail because he alleges no antitrust injury. Plaintiff's theory of injury is that Meta's actions harmed him as a supposed *competitor*, which is not cognizable under the antitrust laws because they seek to remedy only harms to *competition*. Over the course of two lawsuits and four complaints against Meta, Plaintiff has never alleged cognizable antitrust harm, which means his antitrust claims fail as a matter of law.

Each of Plaintiff's antitrust claims also has additional irremediable flaws. The Clayton Act exclusive dealing claim fails as a matter of law because the SAC confirms that Meta never had an exclusive dealing agreement with Plaintiff. The Sherman Act monopoly claim fails as a matter of law because the SAC's theory of anticompetitive conduct is legally unsustainable. And although

Plaintiff purports to rely on the *Aspen Skiing* exception to save his theory of anticompetitive harm, that narrow exception is inapplicable here for multiple reasons.

This Court should affirm the judgment below.

STANDARD OF REVIEW

This Court reviews jurisdictional questions de novo. *Singh v. City of Phoenix*, 124 F.4th 746, 749 (9th Cir. 2024). This Court also reviews de novo an order granting a motion to dismiss for failure to state a claim. *Wilson v. Lynch*, 835 F.3d 1083, 1090 (9th Cir. 2016). Denial of leave to amend is reviewed for abuse of discretion, and a district court acts within its discretion in denying leave to amend where amendment would be futile. *Id.* at 1098 & n.10. Although pro se pleadings are read liberally, that does not excuse pro se litigants from adhering to proper procedure. *Washington v. Kijakazi*, 72 F.4th 1029, 1040 (9th Cir. 2023).

ARGUMENT

I. The Judgment Should Be Affirmed Because Plaintiff Lacks Article III Standing.

Plaintiff lacks standing because he has alleged only injury to Veamcast Corp., not to himself personally. For an alleged "injury to be sufficient for standing," the plaintiff must be "among the injured."

Perry v. Newsom, 18 F.4th 622, 634-35 (9th Cir. 2021) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 563 (1992)). A corollary to that rule is that (with exceptions not relevant here), a plaintiff cannot sue to vindicate another's injuries. And this prohibition applies when, as here, alleged injuries to a corporation are at issue. *See Sherman v. British Leyland Motors, Ltd.*, 601 F.2d 429, 439-40 (9th Cir. 1979) (an action for injury to a corporation must be brought by the corporation); *Erlich v. Glasner*, 418 F.2d 226, 228 (9th Cir. 1969) (dismissing for lack of standing a suit brought by a person who sought to "avoid the corporate entity and thus maintain an action in his own name"); *see also Fisher-Cal Indus. v. FAA*, No. 98-1486, 1999 WL 229041, at *1 (D.C. Cir. Mar. 15, 1999) ("A corporation, not its officers, directors, or shareholders, may bring suit to recover for injury to the corporation."); *Ali v. N.Y.C. Env't Control Bd.*, 670 F. App'x 26, 27 (2d Cir. 2016) ("An individual lacks standing to sue when the alleged injury is based on an injury to a corporate entity.").

The SAC violates this rule. As an initial matter, it is telling that (as discussed above, at 4-5), Plaintiff initially sought to redress the same injuries alleged here in a 2020 lawsuit brought by Veamcast Corp.

The Veamcast Complaint alleged harm *to Veamcast Corp.* from Meta's purported disabling of APIs on which the Veamcast app relied and similarly claimed that "fake" error messages were designed to hide anticompetitive conduct. 2-SER-85. As that lawsuit itself made clear, the alleged injuries were to Veamcast Corp. Specifically, the Veamcast Complaint alleged, Meta's conduct prevented Veamcast Corp. from "getting traffic and building a user base" and it harmed Veamcast Corp. by "wast[ing] a great deal of [Veamcast Corp.'s] resources and development efforts," 2-SER-84-85.

It was only after Plaintiff learned that Veamcast Corp. could not proceed without counsel that he changed course, repurposing the allegations in the Veamcast Complaint and suing on his own behalf. *Supra* 5-6. But restyling the lawsuit in this fashion does not change the fact that Plaintiff's allegations all concern injuries allegedly suffered by Veamcast Corp., and nowhere does the SAC allege any harm to Plaintiff *himself*. That is the fundamental requirement for him to have standing, and without identifying some personally experienced harm, he cannot bring suit.

Rather than allege personal injury to Plaintiff, the SAC alleges that Meta harmed "Plaintiff's *business*," (i.e., Veamcast Corp.) explaining that Meta allegedly "target[ed] Veamcast" by disabling "features that [allegedly] could have allowed *Veamcast* to grow into a competitive platform." 2-SER-202-203, 2-SER-210, 2-SER-212-214 (emphasis added). This, he alleges, inflicted "catastrophic damage to the *[Veamcast] application's* user base and reputation." 2-SER-199-200 (emphases added). The SAC also alleges that "Meta systematically eliminated *Veamcast's* ability to compete" by "impos[ing] restrictive policies on Veamcast," "[b]locking Veamcast," "[d]eleting existing Veamcast content," and depriving users of "Veamcast's innovative features." 2-SER-208-210 (emphasis added); *see also* 2-SER-201 (similar allegations). As the district court found, those are allegations about corporate injury, not injury to Plaintiff.

Plaintiff resists this conclusion by arguing that the district court "conflated a product name with a legal entity." OB32. According to Plaintiff, "Veamcast [is] a platform, the name of the application [he] built, not merely a corporate entity," and he suffered *personal* losses when Meta purportedly disabled certain APIs upon which the Veamcast

app relied. OB32. And Plaintiff contends that Veamcast Corp. could not have suffered any injury from Meta's alleged conduct because Veamcast Corp. has "no assets, no IP, and no operations." OB36; *see also* OB34. But the alleged injuries are plainly to Veamcast Corp. and its app—and that is true regardless of whether Veamcast Corp. has assets. That is dispositive: A "personal economic injury resulting from a wrong to the corporation" is insufficient for standing; the person "must be injured directly and independently of the corporation" to have standing. *Shell Petroleum, N.V. v. Graves*, 709 F.2d 593, 595 (9th Cir. 1983); *accord Von Brimer v. Whirlpool Corp.*, 536 F.2d 838, 846 (9th Cir. 1976); *Erlich*, 418 F.2d at 227-28.[3]

[3] Separate and apart from Article III standing, Plaintiff also lacks statutory antitrust standing to sue because corporate "officers … do not have standing to sue" for antitrust violations causing injury to the corporation. *See Program Eng'g, Inc. v. Triangle Publ'ns, Inc.*, 634 F.2d 1188, 1191 (9th Cir. 1980); *see also Stein v. United Artists Corp.*, 691 F.2d 885, 896 (9th Cir. 1982) (collecting cases). Moreover, as articulated in Meta's district court briefing, 2-SER-70-71, 2-SER-21-22, and elaborated on below, *infra* 30-34, none of the alleged injuries are injuries to competition that could confer the right to sue under the antitrust laws, regardless of whether Plaintiff or Veamcast Corp. was named as the plaintiff.

II. The Judgment Should Be Affirmed Because The Claims Are Time-Barred.

A. Plaintiff waited too long to sue Meta again.

The district court properly held that Plaintiff's claims are time-barred. An antitrust claim accrues on "the date on which injury occurs." *Beneficial Standard Life Ins. Co. v. Madariaga*, 851 F.2d 271, 274-75 (9th Cir. 1988). And the limitations period for private antitrust claims is four years. 15 U.S.C. § 15b. Here, however, the SAC alleges that Meta disabled the APIs no later than 2019, so the statute of limitations ran in 2023—the year before Plaintiff filed this lawsuit. 2-SER-225-242.

The SAC is clear that the alleged disabling of APIs began by 2018 and was completed no later than 2019. And in no uncertain terms, the SAC confirms that by October 2019, the APIs, although they worked "years prior," "no longer did and *never did again*." 2-SER-232 (emphasis added).[4] The SAC also attaches an exhibit purporting to show a 2019 conversation between Plaintiff and Facebook Support. During that 2019 conversation, Plaintiff complained that "Facebook had

[4] It is thus irrelevant whether Meta "closed [Plaintiff's] support ticket" on September 25, 2020. OB2, 9-10 (citing 2-SER-245-251).

been blocking us since 2018." 2-SER-225. He lamented that "[w]henever anything from Veamcast is posted," a message appeared indicating that the content had not been posted, and he said this issue of the Veamcast app being "banned" had persisted "for a long time now." 2-SER-225, 2-SER-227. He further questioned whether Meta's action was "legal" and suggested he intended to hire a lawyer as he believed Meta's conduct to be "anticompetitive." 2-SER-227, 2-SER-238. A customer support agent explained that this happened due to violations of Facebook's policies. 2-SER-229.

These allegations confirm that any alleged injury was complete by 2019, and they rendered the statute of limitations ripe for resolution on the pleadings, *contra* OB22-23. *See Rivera v. Peri & Sons Farms, Inc.*, 735 F.3d 892, 902 (9th Cir. 2013) (pleading may be dismissed on statute of limitations grounds if "the statute of limitations issues are apparent on the face of the complaint"). And because no amendment consistent with the allegations in the SAC could cure the statute of limitations problem, the district court properly dismissed Plaintiff's suit with prejudice. *See Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296-97 (9th Cir. 1990) (leave to amend is properly denied when curing the complaint

would require alleging facts "contradicting … the allegations of [the] original complaint"); *IV Sols., Inc. v. Empire Healthchoice Assurance, Inc.*, No. 20-56132, 2021 WL 5492974, at *1 (9th Cir. Nov. 23, 2021) (affirming dismissal of complaint where "granting leave to amend would [have] be[en] futile because the only way [the plaintiff] could render its claim timely would be to contradict the allegations in its prior two complaints").

B. Plaintiff's counterarguments lack merit.

Confronted with this limitations problem, Plaintiff invokes two tolling doctrines: the fraudulent concealment doctrine and the continuing violation doctrine. OB16-22. Neither helps him.

1. Plaintiff's fraudulent concealment argument fails because he knew about the API disabling in 2019.

The fraudulent concealment doctrine "halts the statute of limitations when" a defendant "active[ly]" conceals the facts from a plaintiff "to prevent the plaintiff from suing in time"; it does not apply when, as here, a plaintiff has "actual []or constructive knowledge of the facts constituting his cause of action." *Guerrero v. Gates*, 442 F.3d 697, 706 (9th Cir. 2006); *Grimmett v. Brown*, 75 F.3d 506, 514-15 (9th Cir.

1996) (emphasis omitted). Crucially, "[t]he limitations period does not toll simply because a party is ignorant of [his] cause of action"; what matters is whether the plaintiff was ignorant of "*the facts* necessary to discover [his] cause of action with due diligence." *Grimmett*, 75 F.3d at 514-15 (emphasis added).

The fraudulent concealment doctrine is of no help to Plaintiff because Plaintiff undisputedly knew about the API denials in 2019; indeed, he admittedly "suspected that Meta's [alleged] conduct might be anticompetitive." OB19. As discussed above (at 16-17), the SAC confirms that Plaintiff knew about the facts underlying his claims no later than 2019, and that on October 9, 2019 he called the conduct "anticompetitive"; said he "need[ed] to hire a lawyer"; and doubted the veracity of the error messages, expressing incredulity that his content had been "'reported as abusive' when content was newly created and had not yet been viewed by users." 2-SER-232-234 (Ex. C); *see also* 2-SER-199 (citing 2-SER-223-224 (Ex. B)).

If a plaintiff who knows "the facts necessary to discover [his] cause of action with due diligence" cannot escape the limitations period, *Grimmett*, 75 F.3d at 514-15, then Plaintiff—who not only knew the

relevant facts but described them in antitrust terms and even hinted he would seek legal recourse as far back as 2019—certainly cannot. *See A.Q.C. ex rel. Castillo v. United States*, 656 F.3d 135, 142-43 (2d Cir. 2011) (awareness of the need for legal counsel is strong evidence that plaintiff possesses the relevant facts for the limitations clock to start on a claim); *accord Phillips v. Generations Fam. Health Ctr.*, 529 F. App'x 14, 16 (2d Cir. 2013).

The fact that Plaintiff in November 2020 filed the Veamcast Complaint about Meta's alleged actions in 2019 further bolsters the limitations argument and undermines Plaintiff's fraudulent concealment argument. *Supra* 4-5. The Veamcast Complaint was based on the same conduct at issue here, referred to Meta's "anticompetitive behavior … [as] a monopoly," and brought the same antitrust claims. 2-SER-81-86. That complaint also belies Plaintiff's assertion that he was the victim of "conceal[ment]." OB19-20. As early as November 2020, Plaintiff was claiming that Meta "used the guise of fake error messages to disable and distract the Plaintiffs." 2-SER-85. Plaintiff cannot credibly claim that any relevant information was concealed from him when he plainly had sufficient knowledge to file a

nearly identical lawsuit on behalf of Veamcast Corp. back in 2020 based on these same events.

This Court's decision in *Rutledge* makes clear that Plaintiff's fraudulent concealment theory fails. In *Rutledge*, this Court rejected a plaintiff's effort to invoke fraudulent concealment to toll the limitations period for an antitrust claim. *Rutledge v. Bos. Woven Hose & Rubber Co.*, 576 F.2d 248, 250 (9th Cir. 1978). There, as here, the plaintiff "had expressed his suspicion" about anticompetitive conduct years earlier and had previously filed another lawsuit based on the anticompetitive conduct but sought to toll the limitations period by invoking fraudulent concealment. *Id.* This Court rejected that attempt because the plaintiff's suspicion showed that he was aware of the facts giving rise to his claim. *Id.* And that was so even though the defendant had proffered a "denial of wrongdoing," because the record confirmed that the plaintiff was "not a man insensitive to the implications of the antitrust laws, nor was he a person who lightly discarded his suspicions." *Id.* *Rutledge* defeats Plaintiff's attempt to rely on the fraudulent concealment doctrine.

In addition, Plaintiff does not sufficiently allege that Meta fraudulently concealed anything from him. The heightened pleading standards of Rule 9(b) apply to Plaintiff's fraudulent concealment theory. *See 389 Orange St. Partners v. Arnold*, 179 F.3d 656, 662 (9th Cir. 1999) (Rule 9(b) requires that "'the circumstances constituting fraud'" be pleaded "'with particularity'"); *accord Guerrero*, 442 F.3d at 706-07. Plaintiff does not meet this standard.

Instead, he merely asserts that Meta used "deceptive error messages," "false 'abuse' reports," and "deceptive … support responses" to hide its allegedly anticompetitive conduct without alleging with particularity which facts Meta intentionally concealed or how Meta intentionally concealed them for the purpose of delaying his filing of this suit. *See* 2-SER-199-200, 2-SER-209-210, 2-SER-214; *Guerrero*, 442 F.3d at 706-07. In particular, he asserts, there was deception because certain popup messages (which appeared when Veamcast attempted unsuccessfully to post certain information) said that the posts had been reported to be abusive—but (he says) that cannot be true because those popup messages appeared just seconds after Veamcast attempted to post the information. OB8, 18, 24-25.

This does not remotely show deception, and certainly not in the way that Rule 9(b) requires. On the contrary, and as explained further below, *infra* 40-41, this occurred because Meta has policies that automatically prevent certain attempted uses and content. These are not discretionary decisions, but the automatic implementation of ex ante controls—as in fact was explained to Plaintiff, *infra* 40-41, which further disproves any claim of deception, *see* OB19-20.

Plaintiff also asserts deception in the form of "a false pretense of technical support," i.e., that the support agents who responded to Plaintiff's complaints actively misled him in order to prevent him from discovering the facts underlying his claims. OB46-47. Nothing supports that bare assertion, and again, certainly not in the way Rule 9(b) requires. And, for all of the reasons discussed above (at 16-17), this assertion is belied by Plaintiff's own awareness of all of the facts necessary to bring a claim.

Because Plaintiff knew about the relevant facts in 2019 and he does not and cannot allege that Meta concealed any of them, the fraudulent concealment doctrine is inapplicable here.

2. Plaintiff's continuing violation argument is forfeited and fails on the merits.

Plaintiff further argues that the limitations period continually restarts because each time the Veamcast app attempts to make an API call, the inability for that API call to be completed (because Meta had allegedly disabled that API functionality) constitutes a new act. OB23. His theory is that such a new "overt act" "restart[s] the statute of limitations" when a plaintiff shows (1) it is a "new and independent act that is not merely a reaffirmation of a previous act," and (2) it "inflict[s] new and accumulating injury on the plaintiff." *Pace Indus., Inc. v. Three Phoenix Co.*, 813 F.2d 234, 238 (9th Cir. 1987). Plaintiff further alleges that the Veamcast app attempted unsuccessfully to make an API call on November 7, 2020, which he argues constituted a new overt act under his theory. OB23.

As an initial matter, this argument is forfeited because nowhere in the SAC (which was, to reiterate, the fourth complaint to advance these claims) does Plaintiff allege this purported November 2020 API denial was a new act, and Plaintiff never contended as much when faced with Meta's limitations argument below—even though Meta preemptively argued that the continuing violations doctrine did not

apply. *See* 2-SER-72-73; *see* 2-SER-41-43. This Court does not consider "arguments on appeal that were not presented or developed before the district court." *Villanueva v. California*, 986 F.3d 1158, 1164 n.4 (9th Cir. 2021) (citation omitted). To the contrary, as discussed above (at 16-17), Plaintiff alleged the opposite: that the disabling happened no later than 2019 and, indeed, that by October 2019, the APIs "*no longer* [worked] and *never did again*." 2-SER-232 (emphasis added). It is thus unsurprising that Plaintiff's argument below was not focused on being injured during the limitations period, but on the notion that he was ignorant of the facts he needed to know to sue due to "fraudulent concealment." 2-SER-41-43. This Court should refuse to consider Plaintiff's new argument raised only on appeal.

Even if this Court were to consider Plaintiff's continuing-violation argument, it fails on the merits. The argument fails because there must be a *new, independent act* and a *new injury* to plead an ongoing violation. *See Pace*, 813 F.2d at 238. The SAC establishes neither, and indeed forecloses both.

There is no new act. Plaintiff contends that the API denials in November 2020 were "*not* the lingering consequences of an earlier

block," but rather "active refusals by Meta's system." OB25 (emphasis added). Plaintiff's argument that Meta decided anew in November 2020 not to deal with the Veamcast app cannot be squared with the SAC's allegations that by October 2019 the APIs had completely stopped working and never worked again, reflecting a final decision that continued to be implemented. *Supra* 16-17; *see also* 2-SER-240 (support agent describing earlier disabling as occurring "automatically").

Each instance of an unsuccessful API call is merely a consequence of the pre-limitations decision by Meta to disable the API functionality, and is thus not an overt act capable of establishing a continuing violation. *See In re Multidistrict Vehicle Air Pollution*, 591 F.2d 68 (9th Cir. 1979) (clock began ticking on antitrust claim once the final decision not to deal was made); *Reveal Chat Holdco LLC v. Facebook, Inc.*, No. 20-cv-00363-BLF, 2021 WL 1615349, at *5-6 (N.D. Cal. Apr. 26, 2021) (continuing violation doctrine fails where there is no new injury beyond "pre-existing injury" from "losing access" to APIs), *aff'd in part, appeal dismissed in part sub nom. Reveal Chat HoldCo LLC v. Meta Platforms, Inc.*, No. 21-15863, 2022 WL 595696 (9th Cir. Feb. 28, 2022); *see also Garrison v. Oracle Corp.*, 159 F. Supp. 3d 1044, 1071-72 (N.D. Cal.

2016) ("Merely carrying out during the limitations period a final, binding decision made prior to the limitations period does not qualify as a new overt act."). If it were otherwise, the limitations clock would run ad infinitum for myriad decisions with continued effects—even when, as was alleged here, all relevant actions were complete and final.

There is no new injury. Plaintiff does not and cannot allege that the November 2020 API denial inflicted a new injury, much less new anticompetitive injury. To the contrary, the SAC alleges unequivocally that the APIs upon which the Veamcast app purportedly relied were completely disabled no later than 2019, so the allegation that Veamcast in November 2020 still could not access those same APIs that were already disabled by 2019 could not have injured Plaintiff (or Veamcast) anew. Underscoring that nothing in November 2020 changed anything for Plaintiff, the SAC even alleges that Meta's actions had by September 4, 2020 "ended [his] willingness to continue using the Facebook API," "therefore requiring a complete rework of [the Veamcast] app." 2-SER-245.

In these ways, the API denials in November 2020 are entirely different from the acts in the cases Plaintiff invokes. *Contra* OB23

(citing *Samsung Elecs. Co. v. Panasonic Corp.*, 747 F.3d 1199, 1202 (9th Cir. 2014); *Hennegan v. Pacifico Creative Serv., Inc.*, 787 F.2d 1299 (9th Cir. 1986)). Each of Plaintiff's relied-upon cases involved affirmative acts that further deepened the claimed harm, not preexisting policies that simply remained in effect and inflicted no new harm. *Samsung*, 747 F.3d at 1202 (adoption of a new license and an attempt to enforce licenses by collecting royalty payments each constituted new acts and inflicted new harms); *Hennegan*, 787 F.2d at 1301 (shepherding tourists to preferred souvenir shops restarted limitations period because each group steered away deepened the harm). The API denials in November 2020 bear no resemblance to the acts in *Samsung* or *Hennegan*.

Instead, this case is more akin to *Air Pollution* and *David Orgell*. In those cases, this Court held that the limitations clock began running with "permanent and final" decisions not to deal and did not restart with actions that merely reaffirmed those decisions. *In re Multidistrict Vehicle Air Pollution*, 591 F.2d at 72 (antitrust claim was barred because the final decision not to deal was made outside the limitations period and any injury resulting within the limitations period was attributable to the earlier decision); *David Orgell, Inc. v. Geary's Stores*,

Inc., 640 F.2d 936, 938 (9th Cir. 1981) (antitrust claim was barred because future denials were merely "a reaffirmation of the original decision not to deal with the plaintiff"); *see also Samsung*, 747 F.3d at 1202 (purpose of the continuing violation doctrine is to distinguish "ongoing" harms from those "where all of the harm [has already] occurred"). Here, by contrast, there is not even an allegation about a "reaffirmation" of the prior decision; the sole claim is that the initial decision, which was complete by 2019, continued to be implemented over time.[5]

III. The District Court's Judgment Should Be Affirmed Because Plaintiff Fails To State Plausible Antitrust Claims.

Even if Plaintiff could overcome the threshold problems of Article III standing and timeliness, the judgment should still be affirmed

[5] For closely related reasons, the district court was correct to conclude that laches also bars Plaintiff's suit. *Contra* OB27-31. Plaintiff seeks relief stemming from "14 years of" alleged conduct, 2-SER-215, and he undisputedly knew about the purportedly anticompetitive conduct by no later than 2019. Nevertheless, he waited until 2024, after the statute of limitations had elapsed, to sue Meta in this lawsuit. Plaintiff contends that the district court erred by not addressing whether Meta was prejudiced, OB27-31, but courts addressing laches have held that the delay at issue here "'creates a rebuttable presumption of prejudice,'" *New York v. Facebook, Inc.*, 549 F. Supp. 3d 6, 37 (D.D.C. 2021), *aff'd sub nom. New York v. Meta Platforms, Inc.*, 66 F.4th 288 (D.C. Cir. 2023), and Plaintiff offers no basis to rebut that presumption.

because Plaintiff has not stated an antitrust claim as a matter of law. First, both of the antitrust claims fail because they seek to vindicate only *personal* injuries, which the antitrust laws do not recognize. *Infra* § III.A. Second, the exclusive dealing claim under the Clayton Act further fails because there was no exclusive dealing agreement. *Infra* § III.B. Third, the monopoly claim under the Sherman Act further fails because there is no anticompetitive conduct at issue here. *Infra* § III.C. None of these defects can be cured, so amendment would be futile.

A. The antitrust claims fail because Plaintiff lacks antitrust standing.

Each of Plaintiff's antitrust claims fails because he lacks antitrust standing. To get past the pleading stage, a plaintiff must "plead[] sufficient facts to state a plausible antitrust injury." *Somers v. Apple, Inc.*, 729 F.3d 953, 963 (9th Cir. 2013); *City of Oakland v. Oakland Raiders*, 20 F.4th 441, 456 (9th Cir. 2021). That means an "injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendants' acts unlawful." *Somers*, 729 F.3d at 963 (quoting *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977)). Among other things, this requires the plaintiff to plead an injury to *competition*, not merely an injury to himself. *Oakland*

Raiders, 20 F.4th at 458; *Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421, 1433 (9th Cir. 1995).

Here, however, Plaintiff's alleged harms are paradigmatic harms to a (supposed) *competitor*, not harms to competition. He alleges, for instance, that Veamcast Corp. suffered harm to "[d]evelopment, infrastructure, and technology investments," "[l]ost business opportunities and potential market share," "[w]asted development costs and resources," "[r]eputational damage," and "[l]ost revenue from existing and projected user base." 2-SER-215. In addition, he alleges that Meta's conduct prevented him from "[b]uilding a user base" and "[r]aising capital due to inability to demonstrate user growth." 2-SER-201.

But it is well-established that a firm's loss of business prospects is an individual harm, not the sort of market-wide competitive harm (for example, higher prices for consumers) that the antitrust laws are designed to redress. *See Pool Water Prods. v. Olin Corp.*, 258 F.3d 1024, 1034 (9th Cir. 2001) (plaintiff must show injury to competition in the relevant market, not merely harm to its own business); *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 812 (9th Cir. 1988) (same). Simply put,

an "injury to [an] individual[] or [an] individual firm[]" does not establish "injury to the market or to competition in general," which is what antitrust standing requires. *McGlinchy*, 845 F.2d at 812.

Despite two lawsuits and four different complaints, Plaintiff has not explained how Veamcast's alleged exclusion from using Meta's APIs inflicts a broader harm to *competition*. And neither Plaintiff's bare-bones allegation that Meta's conduct prevents Veamcast from "[c]ompeting in the social media market" nor his assertion that it "deprived users of Veamcast's" unspecified "innovative features" changes that conclusion. 2-SER-201, 2-SER-209. Plaintiff offers no reason to believe that Veamcast would have competed with Meta absent the deprecation of certain API functionality, and this Court has stressed that "speculative" allegations of consumer harm do not satisfy the antitrust injury requirement. *See Lucas Auto. Eng'g, Inc. v. Bridgestone/Firestone, Inc.*, 140 F.3d 1228, 1233 (9th Cir. 1998) (no cognizable antitrust injury exists if the plaintiff would have been in the same position even absent the allegedly anticompetitive conduct); *Brantley v. NBC Universal, Inc.*, 675 F.3d 1192, 1200-01 (9th Cir. 2012).

Concrete allegations of antitrust injury are particularly essential given the Supreme Court's admonitions in *Twombly* that although "it is one thing to be cautious before dismissing an antitrust complaint in advance of discovery … [it is] quite another to forget that proceeding to antitrust discovery can be expensive" and greenlight implausible antitrust claims. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007).

This Court has accordingly not hesitated to dismiss complaints that dress up individual grievances as antitrust lawsuits. *E.g.*, *Dreamstime.com, LLC v. Google LLC*, 54 F.4th 1130, 1141 (9th Cir. 2022) (affirming dismissal with prejudice because the "allegations have, at most, alleged that Google mistreated [the plaintiff] as a Google customer"); *LiveUniverse, Inc. v. MySpace, Inc.*, 304 Fed. Appx. 554, 557 (9th Cir. 2008) (affirming the dismissal of an antitrust lawsuit where the plaintiff complained about a social media company's "conduct in disabling links," because the antitrust laws vindicate "harm to the process of competition and consumer welfare, not harm to individual competitors"). This Court should do likewise here because Plaintiff has made clear, through multiple complaints, that what he seeks to redress is not injury to competition but injury to himself. Because that will

never be enough for antitrust standing, the dismissal should be affirmed.

B. The "exclusive dealing" claim under Section 3 of the Clayton Act additionally fails because there is no exclusive dealing arrangement at issue here.

Plaintiff's "exclusive dealing" claim under Section 3 of the Clayton Act—which makes unlawful "an agreement between a vendor and a buyer that prevents the buyer from purchasing a given good from any other vendor" when such agreement "has the probable effect of foreclosing competition," *Allied Orthopedic Appliances Inc. v. Tyco Health Care Grp. LP*, 592 F.3d 991, 996 n.1 (9th Cir. 2010)—is irremediably flawed.

Plaintiff's exclusive dealing claim fails as a matter of law because the SAC does not (and cannot) allege any exclusive dealing arrangement. Section 3 prohibits sales or leases made "on the condition, agreement, or understanding" that the buyer will "not use or deal in the goods" of the seller's competitors. 15 U.S.C. § 14. Here, that requires an allegation that Meta conditioned Plaintiff's access to its APIs on his agreement not to use competing platforms or services. The complaint contains no such allegation. *See* 2-SER-211-214.

Nor could it: The record makes clear that Plaintiff freely used other APIs. He brought a separate lawsuit against Roku alleging the same theory of harm based on Roku's APIs, which confirms that he was never locked into Meta's platform at all. *See Roku, Inc.*, 2025 WL 2299403, at *5. Where a plaintiff is free to use alternative platforms, there is no exclusive dealing arrangement to challenge. *Cf. Omega Env't, Inc. v. Gilbarco, Inc.*, 127 F.3d 1157, 1163 (9th Cir. 1997) (holding, as a matter of law, that defendant did not violate Section 3 in part because plaintiff could have used distribution channels other than those used by defendant).[6] And Plaintiff's miscellaneous complaints about how Meta leveraged control over its platform, OB59-60, do not constitute exclusive dealing. *See New York v. Meta Platforms, Inc.*, 66 F.4th 288, 304 (D.C. Cir. 2023) (rejecting as a matter of law an exclusive dealing claim based on a platform control policy because developers were "entirely free to develop applications for Facebook's competitors").

[6] There is no merit to Plaintiff's suggestion that the district court committed "reversible error" for not fully analyzing the merits of his Section 3 claim. OB59-60. Having dismissed the claims on multiple independent bases, the district court was under no obligation to perform additional analysis too.

C. The monopoly claim under Section 2 of the Sherman Act additionally fails because refusing to deal is lawful conduct.

Plaintiff's Section 2 claim fails as a matter of law because there is no anticompetitive conduct at issue here. *Dreamstime.com, LLC*, 54 F.4th at 1137 (explaining that a monopoly claim requires pleading that "the defendant has willfully acquired or maintained monopoly power in [the relevant] market" through anticompetitive means).

The anticompetitive conduct requirement is critical because neither having monopoly power nor "[e]ven an act of pure malice … inten[ded] to harm a competitor" violates the antitrust laws; rather, what is required is, undertaking acts that harm *competition* itself. *Aerotec Int'l, Inc. v. Honeywell Int'l, Inc.*, 836 F.3d 1171, 1184 (9th Cir. 2016) (citations omitted).

Plaintiff theorizes that Meta engaged in anticompetitive conduct by excluding him from using its APIs. But, with limited exceptions inapplicable here, there is no duty to deal with anyone, much less any "duty to aid competitors" or to "deal under terms and conditions that … rivals find commercially advantageous." *Pac. Bell Tel. Co. v. linkLine Commc'ns, Inc.*, 555 U.S. 438, 448, 450, 457 (2009); *MetroNet Servs.*

Corp. v. Qwest Corp., 383 F.3d 1124, 1131 (9th Cir. 2004) (citation omitted).

That freedom to exclude reflects that the goal of the antitrust laws is to *aid* competition, and forcing a company to share with its rival hinders competition by diminishing the company's incentives to engage in "economically beneficial" investments that would promote competition. *MetroNet*, 383 F.3d at 1131. The freedom to exclude also reflects that courts are ill-suited to "act as central planners" of "terms of dealing" like "price[s]" and that forcing competitors to deal with each other "may facilitate the supreme evil of antitrust: collusion." *Id.* This rule explains why courts in this and other circuits regularly dismiss monopoly claims based on the theory that denying platform access is anticompetitive, including in cases brought by Plaintiff himself. *E.g.*, *Reveal Chat Holdco, LLC v. Facebook, Inc.*, 471 F. Supp. 3d 981, 1001 (N.D. Cal. 2020) (dismissing monopoly claim based on refusal to deal); *Roku, Inc.*, 2025 WL 2299403, at *5 (same, for monopoly claim brought by Plaintiff against another company).

Faced with this general rule, Plaintiff purports to rely on the "*Aspen Skiing*" exception—which exists "at or near the outer boundary

of § 2 liability"—for when a monopolist sacrifices profits for anticompetitive ends. *See Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 408-09 (2004) (describing *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985)). This exception applies only in the "rare circumstance[]" when three conditions, all pointing to profit sacrifice that is explainable only by anticompetitive ends, are satisfied. *FTC v. Qualcomm Inc.*, 969 F.3d 974, 993-94 (9th Cir. 2020); *Trinko*, 540 U.S. at 409; *Novell Inc. v. Microsoft Corp.*, 731 F.3d 1064, 1075 (10th Cir. 2013).

First, there must be a "voluntary and profitable course of dealing" between the monopolist and its rival that the monopolist "unilaterally terminates." *Qualcomm*, 969 F.3d at 993. Second, "the refusal to deal [must] involve[] products that the defendant already sells in the existing market to other similarly situated customers." *Id.* at 994. Third, critically, the monopolist must have "sacrifice[d]" profits in a way suggesting that "the only conceivable rationale or purpose is … the exclusion of competition" rather than some legitimate business end—in other words, the monopolist's conduct would be "irrational" but for the

anticompetitive goal. *Aerotec Int'l, Inc.*, 836 F.3d at 1184 (quoting *MetroNet*, 383 F.3d at 1132).

The *Aspen Skiing* exception fails here at every step. The SAC does not allege that Meta has ever been in a profitable commercial relationship with Plaintiff, that Meta sells API access to others similarly situated to Plaintiff, or that Meta sacrificed any profits by denying Plaintiff API access. And how could it? The SAC and Plaintiff's briefs leave undisputed that Meta offered the APIs to developers like Plaintiff without charge, and they offer no basis to think Plaintiff ever contributed to Meta's profits in any way. To the contrary, Plaintiff's filings emphasize that the Veamcast app never even got off the ground, since it failed to "build[] a user base through the Facebook platform." *See* 2-SER-198, 2-SER-201; 2-SER-63-64, 2-SER-72; OB5, 33. The absence of any profitable course of dealing between Meta and Plaintiff (or even Meta and Veamcast Corp.) means the *Aspen Skiing* exception cannot save the SAC. *See LiveUniverse, Inc.*, 304 F. App'x at 556 (district court properly dismissed complaint invoking *Aspen Skiing*

exception because the complaint failed to plead a profitable course of dealing between the plaintiff and defendant).[7]

In any event, even if Plaintiff could allege that Meta sacrificed profits from him when it denied him API access, the touchstone of *Aspen Skiing* is that any profit sacrifice be *irrational*, explainable only by anticompetitive aims. Thus, "a refusal to deal with a competitor doesn't violate section 2 if 'valid business reasons exist for that refusal.'" *Novell*, 731 F.3d at 1075 (citation omitted). Unlike in *Aspen Skiing*, where the profit sacrifice could not be explained by anything other than anticompetitive ends, numerous legitimate business reasons explain why a platform like Meta would restrict access to APIs—security, platform integrity, protection of user data, enforcement of community standards, and managing the costs associated with third-party integrations are some obvious examples. Indeed, Meta repeatedly told

[7] Plaintiff purports to rely on exhibits from an FTC trial involving different plaintiffs. OB47 (citing exhibits from *FTC v. Meta Platforms, Inc.*, No. 20-cv-03590 (D.D.C.)). None of those are properly before the Court and they should therefore be ignored. *See Allen v. City of Beverly Hills*, 911 F.2d 367, 372-73 (9th Cir. 1990) (a party's arguments in an appellate brief are not allegations in a complaint, do not form part of the record on appeal, and are therefore not considered on appeal). Regardless, they are irrelevant to this case and to the *Aspen Skiing* exception.

Plaintiff that the API denials implemented its community standards, 2-SER-229, 2-SER-238, 2-SER-240, and Plaintiff's insistence that those explanations were false is pure speculation unsupported by any plausible allegations. And although "the existence of valid business reasons is ordinarily a question of fact," it may be resolved at the pleading stage when "it is a foregone conclusion requiring no further analysis," as is the case here. *See SmileCare Dental Grp. v. Delta Dental Plan of Cal., Inc.*, 88 F.3d 780, 786 (9th Cir. 1996).

Simply put, *Aspen Skiing* is a "narrow-eyed needle" of an exception, *Novell*, 731 F.3d at 1074, and Plaintiff cannot thread it.

* * *

Plaintiff has tried and failed across multiple complaints to state a plausible antitrust claim against Meta. It is by now beyond dispute that, for multiple reasons, he cannot state a claim. That being so, as the district court correctly held, amendment would be futile. 1-SER-9.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment below.

Respectfully submitted,

/s/ Nicholas González

Nicholas González
ORRICK, HERRINGTON & SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94105
(415) 773-5700
ngonzalez@orrick.com

Eric A. Shumsky
ORRICK, HERRINGTON & SUTCLIFFE LLP
2100 Pennsylvania Avenue, NW
Washington, DC 20037
(202) 339-8400

Jacob M. Heath
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
Menlo Park, CA 94025

Counsel for Meta Platforms, Inc.

June 1, 2026

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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[ ] complies with the length limit designated by court order dated _____.

[ ] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature *s/* Nicholas González **Date** June 1, 2026
(*use "*s/[typed name]*" to sign electronically-filed documents*)