

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

In re Meta Pixel Healthcare Litigation

Meta Pixel Healthcare Litigation · No. 22-cv-03580-WHO (VKD) · Decided April 10, 2025

OPINION

In Re Meta Pixel Healthcare Litigation

PER CURIAM.

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4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 IN RE META PIXEL HEALTHCARE Case No. 22-cv-03580-WHO (VKD)

LITIGATION

8 REDACTED

This Document Relates To:

9 ORDER RE MARCH 14, 2025

DISCOVERY DISPUTE RE

10 All Actions. ZUCKERBERG DEPOSITION 11 Re: Dkt. No. 909 12 13 The parties ask the
Court to resolve their dispute regarding whether plaintiffs should be 14 permitted to take the
deposition of Mark Zuckerberg, Meta’s CEO. Dkt. No. 909.1 The Court 15 finds this dispute
suitable for resolution without oral argument.2 Civil L.R. 7-1(b).

16 Rule 30 of the Federal Rules of Civil Procedure permits “[a] party . . . [to] depose any
17 person, including a party, without leave of court . . .” Fed. R. Civ. P. 30(a)(1). However, under
18 Rule 26(c)(1), “[t]he court may, for good cause, issue an order to protect a party or person from
19 annoyance, embarrassment, oppression, or undue burden or expense,” including forbidding a
20 deposition, or limiting its scope. Fed. R. Civ. P. 26(c)(1). The party seeking a protective order
21 bears the burden of showing good cause for the order by “demonstrating harm or prejudice that
22 will result from the discovery.” *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1063 (9th Cir. 2004). 23
A party’s request for the deposition of a high-level executive of an adverse party—a so- 24 called
“apex” deposition—may create a risk of abuse or harassment. *Apple Inc. v. Samsung Elecs.* 25 1
At the Court’s direction, Meta subsequently filed a copy of the FTC Consent Order and lodged 26
the Mudd deposition transcript, to which both parties refer. 27 2 The Court will issue a separate
order on the associated sealing motion (Dkt. No. 908). 1 *Co., Ltd.*, 282 F.R.D. 259, 263 (N.D. Cal.
2012). A court may, in its discretion, disallow or limit 2 such a deposition if the discovery “can be
obtained from some other source that is more 3 convenient, less burdensome, or less expensive.”
Fed. R. Civ. P. 26(b)(2)(C)(i). In determining 4 whether to permit or limit an apex deposition, a

court should consider (1) whether the deponent 5 has unique first-hand knowledge of the facts at issue in the case, and (2) whether the party seeking 6 the deposition has exhausted other less intrusive means to obtain the discovery. *Apple*, 282 F.R.D. 7 at 263. 8 According to plaintiffs, Mr. Zuckerberg has unique first-hand knowledge regarding several 9 matters relevant to a claim or defense. Specifically, plaintiffs say that discovery obtained to date 10 indicates that Mr. Zuckerberg was the “final decisionmaker on all consequential privacy 11 decisions,” including those involving data collection, consent, and user privacy. See Dkt. No. 909 12 at 2, 3. By virtue of this role, plaintiffs argue, Mr. Zuckerberg’s decisions and the reasons for 13 those decisions bear on questions of Meta’s intent, among other things. Plaintiffs claim that they 14 have exhausted other discovery methods to obtain this information, including taking the deposition 15 of Mr. Mudd, Meta’s Vice President of Business Product Marketing. *Id.* at 3, 4. 16 Meta objects to plaintiffs’ taking Mr. Zuckerberg’s deposition on several grounds. First, 17 Meta contends that Mr. Zuckerberg has no unique first-hand knowledge of any relevant facts, as 18 he did not design or implement the relevant business tools or the Meta filter. *Id.* at 4. Second, it 19 argues that to the extent Mr. Zuckerberg was informed, together with many others, of allegations 20 concerning Meta’s receipt of user health data, his information is, by definition, not unique. *Id.* at 21 4, 5. Third, Meta disputes that Mr. Zuckerberg was required by the FTC or otherwise to act as the 22 final decisionmaker regarding any privacy matters, contending that he merely received reports and 23 certified compliance with the FTC Consent Order by others charged with that responsibility. *Id.* at 24 5. As to other decisions, Meta argues that there is no indication from Mr. Mudd’s testimony or 25 otherwise that Mr. Zuckerberg made any decisions pertinent to the pixel or this action. *Id.* 26 Finally, Meta argues that plaintiffs have not attempted, let alone exhausted, other less intrusive 27 means to obtain the discovery they seek from other sources. *Id.* at 6. 1 While nothing in that Order requires Mr. Zuckerberg to act as the “final decisionmaker” on 2 consequential privacy decisions (as plaintiffs claim), the Order does require that he be informed of 3 consequential privacy decisions and other privacy-related information and that he certify on a 4 quarterly basis that Meta has (1) “established, implemented, and maintained a Privacy Program 5 that complies in all material respects with” the mandatory privacy program requirements in the 6 Order; and (2) “is not aware of any material noncompliance” with those requirements “that has not 7 been corrected or disclosed to the [FTC].” *Id.* at sec. XI, A. While Meta is correct that Mr. 8 Zuckerberg is permitted to rely on information, reports, and certifications provided to him by 9 others, he also “shall rely” on “his . . . personal knowledge.” *Id.* The Court has also reviewed the 10 pertinent portions of Mr. Mudd’s deposition transcript. Mr. Mudd described his understanding of 11 Mr. Zuckerberg’s general approach to decisions making. Mudd dep. at 219:2-220:4. In addition, 12 Mr. Mudd testified that a proposal was presented to Mr. Zuckerberg in 2021 to 13 , and that Mr. Zuckerberg 14 made a decision or gave directions regarding that proposal. Mudd dep. at 229:20-230:24, 233:24- 15 238:6, 241:19-242:18, 247:15-252:11. The proposal in question appears to be relevant to 16 plaintiffs’ claims and/or Meta’s defenses. 17 Having considered the parties’

discovery dispute submission, as well as the FTC Consent 18 Order and Mr. Mudd's testimony, the Court finds that plaintiffs have shown Mr. Zuckerberg is 19 likely to have at least some unique first-hand knowledge of facts relevant to a claim or defense by 20 virtue of his role pursuant to the FTC Consent Order and as a decision maker regarding certain 21 privacy-related matters at issue in this case. The circumstances presented here differ from those in 22 Affinity Labs, in which the plaintiff demanded the deposition of Apple's CEO regarding broad 23 public statements with little relevance to the underlying litigation. See *Affinity Labs v. Apple, Inc.*, 24 No. 09-cv-4436 CW (JL), 2011 WL 1753982, at *16-*17 (N.D. Cal. May 9, 2011) (denying 25 deposition request). They also differ materially from those in *Frasco*, in which the plaintiffs' sole 26 justification for deposing Mr. Zuckerberg was that he was "involved in" government 27 investigations, "was apprised of" Meta's collection of sensitive health data, and had knowledge 1 claims. *Frasco v. Flo Health Inc.*, No. 21-cv-00757-JD, Dkt. No. 264, Dkt. No. 269 (N.D. Cal. 2 || Feb. 8, 2023) (denying deposition request, subject to plaintiffs advising court if circumstances 3 change at a later date). Finally, nothing in the record suggests that plaintiffs here seek Mr. 4 || Zuckerberg's deposition based on his high-level, general management responsibilities, as in *Doble 5 v. Mega Life and Health Ins.*, No. 09-cv-1611-CRB (JL), 2010 WL 1998904, at *3 (N.D. Cal. May 6 18, 2010) (denying deposition request). However, to the extent, plaintiffs seek information about 7 how Meta implemented the pixel, what data it obtained, how it used the data, and how it 8 || implemented privacy protections, they may not use Mr. Zuckerberg's deposition to obtain 9 information about these matters, as such information can be obtained from other witnesses and/or 10 || through other less intrusive means. Rather, plaintiffs' deposition of Mr. Zuckerberg should be 11 directed to facts known to him by virtue of his role pursuant to the FTC Consent Order and as a 12 || decision maker regarding privacy-related matters relevant to this case. 13 As Meta observes, a deposition notice directed to an official at the highest level of 14 || corporate management creates a "tremendous potential for abuse or harassment." *Celerity, Inc. v. 3 15 Ultra Clean Holding, Inc.*, No. 05-cv-4374-MMC (JL), 2007 WL 205067, at *3 (N.D. Cal. Jan. a 16 25, 2007). Considering the manner in which discovery has been conducted in this case, the Court 3 17 agrees that such potential exists with respect to Mr. Zuckerberg's deposition. Accordingly, the 18 deposition will be subject to the following limitations: The parties must agree on a date and 19 location for the deposition, which must occur no later than May 30, 2025 unless the parties 20 stipulate otherwise. The deposition will be limited to no more than three hours, and it will count 21 against plaintiffs' allotment of 12 individual depositions. 22 IT IS SO ORDERED. 23 || Dated: April 10, 2025 24 , ee □ 25 Varin □□□□□ Virginia K. DeMarchi 26 United States Magistrate Judge 27 28