

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

In re Meta Pixel Healthcare Litigation

No. 22-cv-03580-WHO (VKD), Dkt. No. 991 (N.D. Cal. May 5, 2025) · No. 22-cv-03580-WHO (VKD) ·

Decided May 5, 2025

OPINION

In Re Meta Pixel Healthcare Litigation

PER CURIAM.

1 2 3

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 APRIL 25, 2025

All Actions. DISCOVERY DISPUTE RE REVENUE

10 FROM NON-HEALTHCARE

PROVIDERS

11 Re: Dkt. No. 991 12 13 The parties ask the Court to resolve their dispute regarding whether
Meta should be 14 required to answer an interrogatory and to produce documents regarding
advertising revenue Meta 15 received from “non-Healthcare Providers.” Dkt. No. 991. The Court
finds this dispute suitable 16 for resolution without oral argument. Civil L.R. 7-1(b). 17 For the
reasons explained below, the Court orders Meta to provide a further answer to 18 Interrogatory
No. 18 and to produce documents responsive to RFPs 283 and 287, consistent with 19 the
direction provided in this order. The Court orders further proceedings re RFPs 284-286.

20 I. BACKGROUND

21 Plaintiffs seek an order requiring Meta to answer Interrogatory No. 18, which asks Meta to 22
“[s]et forth with specificity the Profits, on a monthly basis from 2017 to present, attributable to 23
Health Advertising Revenue from non-Healthcare Providers.” Dkt. No. 991 at 3; Dkt. No. 992-3
24 at ECF 17. Plaintiffs define the phrase “Health Advertising Revenue from non-Healthcare 25
Providers” as “revenue generated from serving advertisements by non-Healthcare Providers1 to
26 1 Presumably, a “non-Healthcare Provider” is any entity other than a “Healthcare Provider,”
which 27 plaintiffs define as “any of the entities from which Meta was collecting information on
their web- 1 Facebook users based on a match to a Health Inference.” Dkt. No. 992-3 at ECF 14
(definition). 2 A “Health Inference” is “any that was 3 generated in whole or in part using Pixel-

generated Health Information.” Id. at ECF 15. And 4 finally, “Pixel-generated Health Information” is “any information collected by the Meta Pixel² 5 relating to a Health Provider web-property that: (a) was classified or categorized based on the 6 content taxonomies identified in Exhibit B; or (b) included the fact that a user logged into or out of 7 a patient portal, made or changed an appointment[, or made a bill payment.” Id. In addition, 8 plaintiffs ask the Court to order Meta to produce documents responsive to the following five 9 document requests: 10

1. RFP 283: Documents sufficient to identify total revenue from advertisements

11 served for each 3 collectively and separately, during the Class Period, broken down in the time increments used in 12 Meta’s ordinary course of business. 13 2. RFP 284: Documents sufficient to conduct an analysis of “Health Information”⁴ advertisements and its relationship to Health Information collected via the Pixel 14 similar to the analysis conducted by Meta in the document 15 PIXEL_HEALTH000538384. 16

3. RFP 285: Documents sufficient to identify, collectively and separately, the

17 percentage of revenue associated with advertisements in based on mapping the 18 of an advertisement to the equivalent 19 associated with a user, , or user feature – such as the 20 (b) classified by Meta in a or category specified in the attached 21 Exhibit A; (c) for which Meta’s data indicates that the web-property displayed HIPAA notice language required by law; or (d) Meta classified as a health care provider or HIPAA or CMIA 22 covered entity through or any other method. 23 2 Plaintiffs define “Meta Pixel” as encompassing the following Business Tools: “Pixel, SDK, CAPI, Customer List Uploads, DFCA, Offline Conversion Custom Audiences, and offline events 24 (OCAPI).”

25 3 The record does not reflect how plaintiffs define for purposes of these document requests. In the discovery dispute letter, plaintiffs refer the Court to 26 Exhibit C of Dkt. No. 652, but this is just a “placeholder” exhibit. 27 4 The record does not reflect how plaintiffs define “Health Information” for purposes of these mappings included in the source code file cited in the Declaration of Dr. Atif 1 Hashmi 2 filed at Dkt. 630-9, footnote 24. 3 4. RFP 286: Documents sufficient to identify the percentage of and user features that are derived from data collected via the Meta 4 Business Tools associated with HIPAA- or CMIA-Covered Entities or Healthcare Provider web-properties. 5

5. RFP 287: To the extent that Meta claims that revenues from advertisements in

6 are only partially related to Health 7 Information Meta collected from HIPAA- or CMIA-covered entities or Healthcare Provider web-properties, Documents sufficient to calculate or reasonably 8 approximate any reduction Meta contends is necessary for health-related data that Meta collected from non-Healthcare Provider sources. 9 10 Dkt. No. 991 at 3; Dkt. No. 992-3 at ECF 60-64. 11 Plaintiffs argue that this information is relevant to their calculation of Meta’s profits 12 attributable to Meta’s alleged unauthorized interception of putative class members’ confidential 13 health information. Dkt. No. 991 at 1. Specifically, plaintiffs contend that Meta has

used the data 14 at issue, alone or in combination with other data, and/or “health inferences” drawn from the data, 15 to facilitate advertising from non-Healthcare Providers. Id. at 1, 2. Plaintiffs argue that they need 16 the information and documents described above “to present a reasonable approximation of profits 17 causally connected to Meta’s interceptions[.]” Id. at 4. 18 Meta responds that the discovery plaintiffs seek is overbroad and disproportionate to the 19 needs of the case. Id. at 5. Meta notes that it has already agreed to produce revenue-related 20 information and documents for “healthcare advertisers previously identified by plaintiffs,” but it 21 objects to having to investigate all advertisements to determine which had a health-related 22 classification, regardless of any connection to the putative class members’ data at issue, and then 23 investigate the revenue and profits derived from such advertisements. Id. at 5-6.

24 II. DISCUSSION

25 There appears to be no dispute that Meta 26 27 See 1

2 Id. at 6. Plaintiffs contend that this is an unauthorized

3 “use” of putative class members’ data and that Meta has been unjustly enriched by such use. Id. at 4 4-5. Meta counters that, given how its operate, it is not possible to 5 determine in the first instance whether any such data obtained via the Meta Pixel “had an effect on 6 whether any particular ads or types of ads were shown to any Meta user[.]” Id. at 6. 7 Essentially, the parties disagree about whether plaintiffs will be able to show the necessary 8 connection between putative class members’ data and particular advertising, especially advertising 9 from “non-Healthcare Providers.” This is a question that goes to the merits of plaintiffs’ claims. 10 And while Meta may be correct that plaintiffs will not be able to make the necessary showing, the 11 Court is not in a position to make that determination in resolving this discovery dispute. If, as 12 Meta acknowledges, putative class members’ data is 13 the 14 damages-related discovery plaintiffs seek appears to be relevant to their unjust enrichment theory 15 of recovery. See Fed. R. Civ. P. 26(b)(1); *In re Meta Pixel Healthcare Litig.*, No. 22-cv-03580- 16 WHO (VKD), 2025 WL 1191684, at *1 (N.D. Cal. Apr. 24, 2025) (concluding that payments to 17 consumers who share data with Meta are discoverable, even if Meta ultimately shows that such 18 payments are an unreliable basis for calculating damages); *In re Google RTB Consumer Priv. 19 Litig.*, No. 21-cv-02155-YGR (VKD), 2022 WL 4087514, at *7 (N.D. Cal. Sept. 6, 2022) (“It is 20 possible plaintiffs may be able to construct a reliable damages model using, at least in part, 21 information from the Screenwise program. At the very least, the Court is not prepared to conclude 22 that discovery relating to the Screenwise program is wholly irrelevant.”). 23 However, discovery must be both relevant and proportional to the needs of the case. Fed. 24 R. Civ. P. 26(b)(1). Plaintiffs claim their discovery requests contemplate a “simple three-step 25 methodology.” Dkt. No. 991 at 5. Meta objects that, to the contrary, these requests would require 26 it to investigate “voluminous data,” and that the apportionment information plaintiffs demand 27 ignores how Meta’s systems operate. Id. at 7. 1 very difficult to understand, and plaintiffs do little to clarify what documents they seek and why 2 they are likely to yield relevant information. However, taking plaintiffs at their word

regarding 3 the purpose of the discovery requested, the Court orders as follows: 4 Interrogatory No. 18: This interrogatory is difficult to parse, but it appears to be limited to 5 a statement of Meta's profits on revenue received (a) from "non-Healthcare Providers" (b) for 6 advertising where (c) data obtained from putative class members via the Meta Pixel (d) was 7 8 (g) during the relevant class period.⁵ Meta 9 must answer this interrogatory based on information that is reasonably accessible. The Court 10 appreciates that Meta may not have some or all of the information called for by this interrogatory, 11 or that an answer might only be available as a product of expert discovery. If this is the case, Meta 12 may so state in its further response to Interrogatory No. 18. 13 Document requests: As noted above, these document requests rely on defined terms and/or 14 cross-referenced materials that are not part of the record before the Court. While Meta's written 15 responses include objections that these requests are vague and ambiguous, Meta does not rely on 16 those objections in its portion of the discovery dispute letter. As best the Court can discern, 17 plaintiffs seek documents that will allow them to calculate or estimate the portion of Meta's 18 advertising revenue and/or profits that they contend is attributable to the alleged unauthorized use 19 of putative class members' health information. If there is agreement about what it means for 20 advertisements to be classified in a (RFP 283), then 21 Meta must produce documents sufficient to show its revenue from such advertisements during the 22 class period, to the extent those documents are reasonable accessible. Likewise, if Meta contends 23 that the revenue responsive to RFP 283 cannot be attributed in whole or in part to the alleged 24 unauthorized use of putative class members' health information, Meta must produce the 25 documents that would permit apportionment of that revenue and/or account for costs or other 26 reductions (RFP 287). 27 1 Conversely, the Court cannot determine from the discovery dispute letter what documents 2 || plaintiffs seek by means of RFPs 284-286 or how those documents are likely to yield information 3 that will allow plaintiffs to do what they say they are trying to do—reasonably approximate 4 || Meta's unjust enrichment. The Court will not order Meta to produce documents responsive to 5 these requests at this time, but will require the parties to confer further, as explained below.

6) I. CONCLUSION

7 The Court orders Meta to provide a further answer to Interrogatory No. 18, consistent with 8 || the Court's direction above, by May 23, 2025, unless the parties stipulate to a different date. The 9 Court also orders Meta to produce documents responsive to RFPs 283 and 287, consistent with the 10 Court's direction above, by May 23, 2025, unless the parties stipulate to a different date. 11 As for RFPs 284-286, the Court directs the parties to confer further regarding the specific 12 || data or documents plaintiffs seek, taking into account the Court's determination in this order that 14 plaintiffs may obtain 15 discovery of the revenue and/or profits associated with that use in aid of their unjust enrichment 16 || theory, but only to the extent the information plaintiffs seek is reasonably accessible to Meta. The 3 17 parties shall jointly report back to the Court by May 19, 2023 regarding the status of their efforts 18 to reach agreement on these document requests. The

joint status report is limited to 500 words 19 total. 20 IT IS SO ORDERED. 21 Dated: May 5, 2025 22 2 Uniaiuin®, Marcle: A Virginia K. DeMarchi United States Magistrate Judge 25 26 27 28

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