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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: SOCIAL MEDIA ADOLESCENT  
ADDICTION/PERSONAL INJURY  
PRODUCTS LIABILITY LITIGATION

Case No. 4:22-md-03047-YGR

MDL No. 3047

This Document Relates to:  
All Actions

**ORDER GRANTING DEFENDANT MARK  
ZUCKERBERG’S MOTION TO DISMISS WITH  
LEAVE TO AMEND**

Re: Dkt. No. 518

Defendant Mark Zuckerberg moves to dismiss claims of fraudulent and negligent concealment and misrepresentation asserted against him personally in 25 cases in this multi-district litigation (“MDL”). Having carefully considered the parties’ briefing and argument on February 23, 2024, the Court **GRANTS** defendant Zuckerberg’s motion to dismiss. Plaintiffs shall have **LEAVE TO AMEND** subject to the limitations set forth herein.

**I. BACKGROUND**

As described in prior orders, this MDL consolidates hundreds of actions brought on behalf of children and adolescents alleging that several social media companies—Meta’s Facebook and Instagram, Google’s YouTube, ByteDance’s TikTok, and Snapchat—designed their platforms to foster compulsive use by minors, resulting in a variety of harms. While the 15 different theories of liability asserted in the Second Amended Master Complaint (“SAC”) are brought almost exclusively against the above-named corporate defendants, a small subset of plaintiffs—25 cases<sup>1</sup>—bring two of those claims against Mark Zuckerberg, Meta’s founder, in his personal

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<sup>1</sup> Plaintiffs note that 25 active cases name Mark Zuckerberg as a defendant. *See Baker* SFC (No. 23-cv-01578); *B.B.* SFC (No. 23-cv-03032); *Booker* SFC (No. 23-cv-01537); *C.G.* SFC (No. 23-cv-01568); *C.S.* SFC (No. 23-cv-01569); *Calvoni Am.* SFC (No. 22-cv-05873); *Cameron* SFC (No. 23-cv-03266); *Cusato* SFC (No. 23-cv-04961); *D.S.* SFC (No. 23-cv-03402); *Dodd* SFC (No. 23-cv-01583); *Dowdy* SFC (No. 23-cv-01866); *Dyer* SFC (No. 23-cv-01567); *Garceau* SFC (No. 23-cv-04962); *H.D.* SFC (No. 23-cv-01425); *Haas* SFC (No. 23-cv-01565); *Hirka* SFC

1 capacity: fraudulent concealment and misrepresentation (Count 8) and negligent concealment and  
2 misrepresentation (Count 9).

3 Plaintiffs in the above-referenced 25 cases filed short-form complaints (“SFCs”) to provide  
4 additional information about themselves and the claims they assert.<sup>2</sup> Each of the SFCs asserting  
5 claims against Zuckerberg appends an exhibit that, with slight variation in each, states the  
6 following:

7 In Zuckerberg’s testimony before Congress and in other public  
8 statements alleged in paragraphs 364 through 391 of the Master  
9 Complaint, Defendants Meta and Zuckerberg disclosed some facts  
10 but intentionally failed to disclose other facts, making their  
11 disclosures deceptive. In addition, Meta and Zuckerberg intentionally  
12 failed to disclose certain facts that were known only to them, which  
13 Plaintiff and their parents could not have discovered. Had the omitted  
14 information been disclosed, the injuries that Plaintiff suffered would  
15 have been avoidable and avoided. Plaintiff reasonably would have  
16 been on alert to avoid an ultimately dangerous activity. Plaintiff  
17 asserts that she has always valued her health, and makes conscious  
18 choices to avoid other common dangerous activities teenagers and  
19 pre-teens often fall victim to, such as drinking and vaping. Because  
20 Plaintiff was unaware of the dangers of Instagram, she could not take  
21 those same healthy steps to avoid a dangerous situation. Plaintiff  
22 repeats and realleges against Zuckerberg each and every allegation  
23 against Meta contained in Count 8 (paragraphs 976 through 987) and  
24 Count 9 (paragraphs 988 through 999) in the Master Complaint.

25 (*Haas* SFC, Ex. A (No. 23-cv-01565).) The plaintiff fact sheets (“PFSs”) at issue add further  
26 detail as to individual circumstances and include minimal allegations as to Zuckerberg.<sup>3</sup>

27 \_\_\_\_\_  
28 (No. 23-cv-03906); *J.F.* SFC (No. 23-cv-01846); *Jackson* SFC (No. 23-cv-03774); *Jansky* SFC  
(No. 23-cv-02026); *K.C.* SFC (No. 23-cv-03179); *Keizer* SFC (No. 23-cv-02972); *Koizol* SFC  
(No. 23-cv-02244); *M.C.* SFC (No. 23-cv-03398); *M.M.* SFC (No. 23-cv-01615); *M.W.* SFC  
(No. 23-cv-03824); *N.K.* SFC (No. 23-cv-01584); *Robertson* SFC (No. 24-cv-00127); *S.S.* SFC  
(No. 23-cv-02024); *see also* Dkt. No. 538, Plfs.’ Opp. Br., at 1 n.1. Defendants identified in their  
briefing—and have since clarified as inapplicable—two cases which have been dismissed, *see*  
Notice of Voluntary Dismissal, *Dyer v. Meta Platforms, Inc.*, No. 23-cv-01567 (N.D. Cal. Sept.  
18, 2023); Notice of Voluntary Dismissal, *H.D. v. Meta Platforms, Inc.*, No. 23-cv-01425 (N.D.  
Cal. May 25, 2023), and another case which does not actually plead Counts 8 and 9 against any  
defendants other than Meta, *see M.W.* SFC at 7 (No. 23-cv-03824).

<sup>2</sup> SFCs are forms used across this and other MDLs to provide basic information about  
specific plaintiffs and the grounds for their suits.

<sup>3</sup> The majority of these plaintiffs’ PFSs make no reference to defendant Zuckerberg aside  
from including his name in the case caption. Only three PFSs, which are subject to the Court’s  
protective order, again make note of knowledge of Zuckerberg’s alleged misrepresentations. *See*  
*Cameron* PFS at 58 (No. 23-cv-03266); *Dodd* PFS at 59 (No. 23-cv-01583); *K.C.* PFS at 59

1 The SAC, which each SFC incorporates by reference, contains additional factual  
2 allegations relating to the statements Zuckerberg purportedly made about Meta’s platform. The  
3 majority of these statements concern the safety of platform use, for example: Facebook’s  
4 “controls are not just to make people feel safe; it’s actually what people want in the product,” SAC  
5 ¶ 173; “One of the most important responsibilities we have as a company is to keep people safe  
6 and stop anyone from abusing our service,” *id.* ¶ 370(f); or “You should expect we’ll do  
7 everything we can to keep you safe on our services, within the bounds of an encrypted service,” *id.*  
8 ¶ 370(l). The most concrete of Zuckerberg’s statements is that “we do not allow people under the  
9 age of 13 to sign up and I think if we ever were, we would need to try to figure out a lot of ways to  
10 make sure that they were safe . . . .” *Id.* ¶ 369(c).<sup>4</sup>

11 Plaintiffs build out their theory of liability as to Zuckerberg in their opposition to  
12 defendant’s motion to dismiss. (*See* Dkt. No. 538, Plfs.’ Opp. Br.) They focus primarily on two  
13 aspects of Zuckerberg’s role in Meta. First, plaintiffs allege that, from Meta’s inception to the  
14 present, Zuckerberg has maintained tight control over design decisions, including those relating to  
15 developing user engagement that are at issue in this litigation. Second, emphasizing Zuckerberg’s  
16 role as a public figure and given his alleged knowledge of Meta’s platforms’ dangers, plaintiffs  
17 allege that his statements about Meta’s platforms’ safety—including some of those excerpted  
18 above—form a pattern of concealment that is actionable under theories of fraudulent and negligent  
19 misrepresentation and concealment.

## 20 II. LEGAL FRAMEWORK

### 21 A. Law to Apply in an MDL

22 In an MDL, the transferee court applies the law of its circuit to issues of federal law, but on  
23 issues of state law it applies the state law that would have been applied to the underlying case as if

24 \_\_\_\_\_  
25 (No. 23-cv-03179).

26 <sup>4</sup> The SAC also incorporates by reference certain allegations contained in the Attorneys  
27 General complaint. *See* SAC ¶ 391A; *see also* Complaint (“AG Complaint”), *Arizona v. Meta*  
28 *Platforms, Inc.*, No. 23-cv-05448 (Oct. 24, 2023); Dkt. No. 495-1 (No. 22-md-3047). That  
complaint contains allegations of additional public statements by Zuckerberg. *See* AG Complaint  
¶¶ 137, 191, 222–23, 415–16, 419, 438, 465, 685.

1 it had never been transferred into the MDL. *In re Anthem, Inc. Data Breach Litig.*, 2015 WL  
 2 5286992, at \*2 (N.D. Cal. Sept. 9, 2015) (collecting Ninth Circuit cases). This includes  
 3 application of the choice of law analysis required by the state of the transferor forum. *See, e.g., In*  
 4 *re Train Derailment Near Amite, Louisiana, on Oct. 12, 2002*, MDL No. 1531, 2003 WL  
 5 22384962, at \*3 (E.D. La. Oct. 16, 2003) (discussing *Van Dusen v. Barrack*, 376 U.S. 612, 626–  
 6 40 (1964)).

7 The claims at issue here—fraudulent and negligent misrepresentation or concealment—are  
 8 governed by state law. The parties have not explicitly identified what states’ law applies in their  
 9 briefing. However, as indicated at argument, plaintiffs allege claims arising under the states of  
 10 each plaintiff’s primary use of Meta’s platforms: Arizona, Colorado, Connecticut, Georgia,  
 11 Maryland, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia, and  
 12 Wisconsin. (*See* Dkt. No. 669, Tr. of Feb. 23, 2024 Case Management Conference at 9:1–11:3.)<sup>5</sup>  
 13 The Court applies the laws of those 13 states to the claims against Zuckerberg.

#### 14 **B. Motion to Dismiss Standards**

15 The standard under Federal Rule of Civil Procedure 12(b)(6) is well-known and not in  
 16 dispute. “To survive a motion to dismiss for failure to state a claim after the Supreme Court’s  
 17 decisions in *Iqbal* and *Twombly*, plaintiffs’ allegations must suggest that their claim has at least a  
 18 plausible chance of success.” *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1134–35 (9th Cir. 2014)  
 19 (cleaned up). The district court must assume that the plaintiffs’ allegations are true and draw all  
 20 reasonable inferences in their favor. The court need not, however, construe as true conclusory  
 21

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22 <sup>5</sup> The transferor forums and the states of primary use for each case are identified in the  
 23 SFCs as follows: *Baker* (No. 23-cv-01578) (W.D. Tex.) (TX); *B.B.* (No. 23-cv-03032) (D.S.C.)  
 24 (SC); *Booker* (No. 23-cv-01537) (D.S.C.) (SC); *C.G.* (No. 23-cv-01568) (N.D. Ga.) (GA); *C.S.*  
 25 (No. 23-cv-01569) (E.D.N.C.) (NC); *Calvoni* (No. 22-cv-05873) (N.D. Cal.) (NC); *Cameron*  
 26 (No. 23-cv-03266) (D.S.C.) (SC); *Cusato* (No. 23-cv-04961) (N.D. Cal.) (NY); *D.S.* (No. 23-cv-  
 27 03402) (N.D. Ga.) (GA); *Dodd* (No. 23-cv-01583) (S.D. Ga.) (NC, NY, GA); *Dowdy* (No. 23-cv-  
 28 01866) (D. Md.) (MD); *Garceau* (No. 23-cv-04962) (N.D.N.Y.) (NY); *Haas* (No. 23-cv-01565)  
 (D. Colo.) (CO); *Hirka* (No. 23-cv-03906) (N.D. Cal.) (OH); *J.F.* (No. 23-cv-01846) (D.S.C.)  
 (SC); *Jackson* (No. 23-cv-03774) (D. Md.) (MD); *Jansky* (No. 23-cv-02026) (N.D. Cal.) (OH);  
*K.C.* (No. 23-cv-03179) (E.D. Va.) (VA); *Keizer* (No. 23-cv-02972) (N.D. Cal.) (PA); *Koizol*  
 (No. 23-cv-02244) (N.D. Cal.) (CT); *M.C.* (No. 23-cv-03398) (D. Ariz.) (AZ); *M.M.* (No. 23-cv-  
 01615) (N.D. Cal.) (WI); *N.K.* (No. 23-cv-01584) (D. Colo.) (CO); *Robertson* (No. 24-cv-00127)  
 (D.S.C.) (SC); *S.S.* (No. 23-cv-02024) (D. Colo.) (CO).

1 statements or unreasonable inferences. *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th  
 2 Cir. 2008). These well-established standards apply with equal force in MDL proceedings. *See In*  
 3 *re Optical Disk Drive Antitrust Litig.*, 2011 WL 3894376, at \*8–9 (N.D. Cal. Aug. 3, 2011)  
 4 (applying such standard in the context of an MDL); *In re Zofran (Ondansetron) Prod. Liab. Litig.*,  
 5 2017 WL 1458193, at \*5 (D. Mass. Apr. 24, 2017) (the “creation of an MDL proceeding does not  
 6 suspend [or change] the requirements of the Federal Rules of Civil Procedure”).

7 Allegations of fraud “must state with particularity the circumstances constituting fraud.”  
 8 Fed. R. Civ. P. 9(b). “Averments of fraud must be accompanied by ‘the who, what, when, where,  
 9 and how’ of the misconduct charged.” *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir.  
 10 2009) (quoting *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003)). “For claims  
 11 based on fraudulent omissions, the Rule 9(b) standard is ‘somewhat relaxed,’ but a plaintiff must  
 12 still ‘describe the content of the omission and where the omitted information should or could have  
 13 been revealed.’” *Zwerling v. Ford Motor Co.*, No. 19-cv-03622, 2024 WL 37220, at \*2 (N.D. Cal.  
 14 Jan. 2, 2024) (citations omitted); *see Daniel v. Ford Motor Co.*, 806 F.3d 1217, 1225 (9th Cir.  
 15 2015) (reliance “can be presumed, or at least inferred, when the omission is material”).

### 16 **III. MISREPRESENTATION THEORIES**

17 The Court reviews the fraudulent and negligent misrepresentation laws of each of the 13  
 18 states implicated by defendant’s motion to dismiss. There is generally harmony among the states’  
 19 approaches to these claims, but the Court accounts herein for certain state-to-state differences.

#### 20 **A. Elements of Fraudulent and Negligent Misrepresentation**

21 While some components of a fraud claim vary from state to state, “the fundamental  
 22 elements of fraud are substantially similar from state to state.” *In re Takata Airbag Prod. Liab.*  
 23 *Litig.*, No. 15-md-02599, 2023 WL 4925368, at \*12 (S.D. Fla. June 20, 2023) (quoting *Spencer v.*  
 24 *Hartford Fin. Servs. Grp., Inc.*, 256 F.R.D. 284, 300 (D. Conn. 2009)). Generally, the state  
 25 fraudulent misrepresentation claims at issue here require plaintiffs to show (1) a false  
 26 representation, (2) the speaker’s knowledge of its falsity, (3) an intent to defraud, (4) the hearer’s  
 27  
 28

1 reasonable or justifiable reliance on the statement, (5) and consequent and proximate injury.<sup>6</sup>

2 As to claims of negligent misrepresentation, again with some variation, the core elements  
3 include: (1) a false representation, (2) the speaker's intent to induce the hearer's reliance on the  
4 statement, (3) the speaker's failure to exercise reasonable care in communicating the information  
5 (*i.e.*, breach of a duty of care), (4) the hearer's reasonable or justifiable reliance, and  
6 (5) consequent and proximate injury.<sup>7</sup>

7 When a claim for negligent misrepresentation is based on an *affirmative* misrepresentation,  
8 the duty at issue is a duty of care, as noted above. When liability is based on an *omission*, the duty  
9 under either a fraudulent or negligent misrepresentation claim is a duty to disclose, provided the  
10 state recognizes claims of negligent misrepresentation by omission.

### 11 **B. Affirmative Misrepresentations**

12 At oral argument, plaintiffs confirmed their theories of misrepresentation as to Zuckerberg  
13 are based exclusively on misrepresentation by omission. (Dkt. No. 669, Tr. of Feb. 23, 2024 Case  
14 Management Conference at 11:13–17.) Accordingly, defendant's motion to dismiss plaintiffs'

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16 <sup>6</sup> *Nielson v. Flashberg*, 419 P.2d 514, 517–18 (Ariz. 1966); *Morrison v. Goodspeed*, 68  
17 P.2d 458,462 (Colo. 1937); *Coors v. Security Life of Denver Ins. Co.*, 112 P.3d 59, 66 (Colo.  
18 2005); *Maturo v. Gerard*, 494 A.2d 1199, 1201 (Conn. 1985); *Argentum International LLC v.*  
19 *Woods*, 634 S.E.2d 195, 200 (Ga. App. 2006); *Nails v. S&R, Inc.*, 639 A.2d 660, 668 (Md. 1994);  
20 *Lama Holding Co. v. New York Smith Barney Inc.*, 88 N.Y.2d 413 (N.Y. App. Div. 1996); *Freese*  
21 *v. Smith*, 428 S.E.2d 841,846 (N.C. 1993); *Russ v. TRW, Inc.*, 570 N.E.2d 1076, 1083 (Ohio  
22 1991); *Gibbs v. Ernst*, 647 A.2d 882, 889 (Pa. 1994); *Kahn Constr. Co. v. S.C. Nat'l Bank of*  
23 *Charleston*, 271 S.E.2d 414, 415 (S.C. 1980); *Solutioneers Consulting, Ltd v. Gulf Greyhound*  
24 *Partners, Ltd.*, 237 S.W.3d 379, 385 (Tex. App. 2007); *Van Deusen v. Snead*, 441 S.E.2d 207,  
25 209–10 (Va. 1994); *Kaloti Enters. v. Kellogg Sales Co.*, 699 N.W.2d 205, 211 (Wis. 2005).

26 <sup>7</sup> *Jackson v. Wells Fargo Bank, N.A.*, No. 13-cv-00617, 2015 WL 13567130, at \*7 (D.  
27 Ariz. Aug. 31, 2015); *Mullen v. Allstate Ins. Co.*, 232 P.3d 168, 174 (Colo. App. 2009); *Hull v.*  
28 *Fonck*, 999 A.2d 775, 778 (Conn. 2010); *Home Depot U.S.A., Inc. v. Wabash Nat. Corp.*, 724  
S.E.2d 53, 60 (Ga. 2012); *Cooper v. Berkshire Life Ins. Co.*, 810 A.2d 1045, 1054 (Md. App. Ct.  
2002); *Gomez-Jimenez v. New York L. Sch.*, 956 N.Y.S.2d 54, 59 (N.Y. App. Div. 2012); *Jones v.*  
*J. Kim Hatcher Ins. Agencies Inc.*, 893 S.E.2d 1, 6 (N.C. Ct. App. 2023); *Roberts v. McCoy*, 88  
N.E.3d 422, 428 (Ohio Ct. App. 2017); *Bortz v. Noon*, 729 A.2d 555, 561 (Pa. 1999); *Beneficial*  
*Fin. I, Inc. v. Windham*, 847 S.E.2d 793, 802–03 (S.C. Ct. App. 2020); *Kastner v. Jenkins &*  
*Gilchrist, P.C.*, 231 S.W.3d 571, 577 (Tex. App. 2007). Technically, Virginia does not recognize  
negligent misrepresentation as a tort distinct from constructive fraud; however, the analysis under  
Virginia's constructive fraud doctrine is consistent with the negligent misrepresentation analysis  
developed herein. See *Stoney v. Franklin*, 54 Va. Cir. 591, at \*4 n.2 (Va. Cir. 2001) (no tort styled  
as "negligent misrepresentation" in Virginia); *Richmond Metro. Auth. v. McDevitt St. Bovis, Inc.*,  
507 S.E.2d 344, 347 (Va. 1998) (elements of constructive fraud).

1 fraudulent and negligent misrepresentation claims is **GRANTED** insofar as plaintiffs' claims are  
 2 based on Zuckerberg's affirmative misrepresentations. The court therefore need not consider the  
 3 parties' arguments regarding the actionability of alleged affirmative misrepresentations or any  
 4 arguments under the *Noerr-Pennington* line of cases.

### 5 C. Duty to Disclose

6 Claims of fraudulent and negligent misrepresentation by omission require a duty to  
 7 disclose. (*Accord* Dkt. No. 669, Tr. of Feb. 23, 2024 Case Management Conference at 14:20–  
 8 20:17.) Where a claim of *fraudulent* misrepresentation is by concealment or omission, all states  
 9 implicated here, with some nuance,<sup>8</sup> require that the speaker have a duty to disclose.<sup>9</sup>

10 Preliminarily, the Court finds that at least the states of Georgia, Maryland, North Carolina,  
 11 and Ohio do not recognize claims for negligent misrepresentation by omission and so defendant's  
 12 motion to dismiss is **GRANTED** for plaintiffs' theories of negligent misrepresentation by omission  
 13 as to those states.<sup>10</sup>

14  
 15 <sup>8</sup> The Supreme Court of Arizona describes three forms of fraud recognized in its state:  
 16 misrepresentation, concealment, and non-disclosure. That court explains a duty to disclose is  
 17 appropriate for fraud by non-disclosure, rather than fraud by concealment, which is an intentional  
 18 tort. *Wells Fargo Bank v. Arizona Laborers, Teamsters & Cement Masons Loc. No. 395 Pension*  
 19 *Tr. Fund*, 38 P.3d 12, 34 n.22 (Ariz. 2002); *see also Nelson v. Bank of Am.*, No. 11-cv-1117, 2012  
 20 WL 12870248, at \*5 (D. Ariz. Oct. 10, 2012). Not all states make this distinction. *See, e.g.,*  
 21 *Mallon Oil Co. v. Bowen/Edwards Assocs., Inc.*, 965 P.2d 105, 111 (Colo. 1998) (“To succeed on  
 a claim for fraudulent concealment or non-disclosure, a plaintiff must show that the defendant had  
 a duty to disclose material information.” (emphasis supplied)). Because plaintiffs' theory focuses  
 solely on Zuckerberg's alleged omissions (Dkt. No. 669, Tr. of Feb. 23, 2024 Case Management  
 Conference at 11:13–17), the Court construes their claim against Zuckerberg under Count 8 as one  
 of fraudulent nondisclosure under Arizona law and any other states' following the same  
 distinction.

22 <sup>9</sup> *Mallon Oil Co. v. Bowen/Edwards Assocs., Inc.*, 965 P.2d 105, 111 (Colo. 1998); *Barr v.*  
 23 *MFI Mgmt., Inc.*, 2022 WL 18107587, at \*12 (Conn. Super. Ct. Dec. 14, 2022); *Infrasource, Inc.*  
 24 *v. Hahn Yalena Corp.*, 613 S.E.2d 144, 146 (Ga. App. 2005); *Green v. H&R Block, Inc.*, 735 A.2d  
 1039, 1060 (Md. 1999); *Spencer v. Green*, 42 A.D.3d 521, 522 (N.Y. App. Div. 2007); *Freese v.*  
 25 *Smith*, 428 S.E.2d 841, 846 (N.C. 1993); *Russ v. TRW, Inc.*, 570 N.E.2d 1076, 1083 (Ohio 1991);  
 26 *Gibbs v. Ernst*, 647 A.2d 882, 889 (Pa. 1994); *Manning v. Dial*, 245 S.E.2d 120 (S.C. 1978);  
*Solutioneers Consulting, Ltd v. Gulf Greyhound Partners, Ltd.*, 237 S.W.3d 379, 385 (Tex. App.  
 2007); *What Hurts, LLC v. Volvo Penta of the Americas, LLC*, No. 22-cv-552, 2024 WL 69070, at  
 \*10 (E.D. Va. Jan. 5, 2024); *Kaloti Enters. v. Kellogg Sales Co.*, 699 N.W.2d 205, 211 (Wis.  
 2005).

27 <sup>10</sup> *See Bonham v. Wolf Creek Acad.*, 767 F. Supp. 2d 558, 570 (W.D.N.C. 2011)  
 28 (“[N]egligent omissions . . . cannot form the basis of a claim for negligent misrepresentation under  
 North Carolina law.”); *Textron Fin. Corp. v. Nationwide Mut. Ins. Co.*, 684 N.E.2d 1261, 1269

1 With respect to states that do recognize claims of *negligent* misrepresentation by  
 2 omission—Arizona, Connecticut, New York, Pennsylvania, and Texas—each require that the  
 3 speaker have a duty to disclose.<sup>11</sup> Colorado courts disagree on whether to recognize such  
 4 claims,<sup>12</sup> but where they do, a duty to disclose is required.<sup>13</sup> The same is true for the courts of

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 6  
 7 \_\_\_\_\_  
 8 (Ohio Ct. App. 1996) (“Negligent misrepresentation does not lie for omissions; there must be  
 some affirmative false statement.”).

9 At best, Maryland courts have not decided whether to recognize negligent  
 10 misrepresentation by omission. *See Shaw v. Brown & Williamson Tobacco Corp.*, 973 F. Supp.  
 11 539, 549–50 (D. Md. 1997) (“[T]he Court is aware of no case in Maryland where a judgment for  
 12 negligent misrepresentation was upheld in the absence of such an affirmative representation.”);  
*Lloyd v. Gen. Motors Corp.*, 916 A.2d 257, 273 (Md. Ct. App. 2007) (defendant must “negligently  
 13 assert[] a false statement” for negligent misrepresentation claim). The Court declines to expand  
 14 Maryland law.

15 Similarly, Georgia courts do not appear to recognize negligent misrepresentation by  
 16 omission. *See Ali v. Fleet Fin., Inc. of Georgia*, 500 S.E.2d 914, 915 (Ga. Ct. App. 1998)  
 17 (“[B]ecause Fleet did not make any representations, Ali cannot set forth the requisite elements of  
 18 negligent misrepresentation.”); *Intellicig USA, LLC v. CN Creative Ltd.*, No. 15-cv-1832, 2017  
 19 WL 11634374, at \*7 n.6 (N.D. Ga. Mar. 6, 2017) (“[C]ases strongly suggest[] that a negligent  
 20 misrepresentation claim requires an affirmative representation.”). Further, plaintiffs have  
 21 conceded as much. (Dkt. No. 661 at 1 n.†, 2).

22 <sup>11</sup> Certain states explicitly require a duty to disclose. *See In re Arizona Theranos, Inc.*,  
 23 *Litig.*, 308 F. Supp. 3d 1026, 1055 (D. Ariz. 2018); *Off. Furniture Rental All., LLC v. Liberty Mut.*  
 24 *Fire Ins. Co.*, 981 F. Supp. 2d 111, 120 (D. Conn. 2013); *Krobath v. S. Nassau Communities*  
 25 *Hosp.*, 115 N.Y.S.3d 389, 391 (N.Y. App. Div. 2019); *Brown & Brown of Texas, Inc. v. Omni*  
 26 *Metals, Inc.*, 317 S.W.3d 361, 384 (Tex. App. 2010). Pennsylvania has not explicitly stated that  
 27 negligent misrepresentation by omission requires a duty to disclose, but their case law is consistent  
 28 with that requirement. *See Destefano & Assocs., Inc. v. Cohen*, No. 2775JUNETERM2000, 2001  
 WL 1807790, at \*4 (Pa. C.P. Apr. 9, 2001) (citing Pennsylvania case law that negligent  
 misrepresentation requires the speaker owe an independent duty to the plaintiff, and that “mere  
 silence, in the absence of a duty to speak, is not actionable”).

<sup>12</sup> *Compare, e.g., Craig Hosp. v. Tyson Foods, Inc.*, No. 17-cv-02534, 2019 WL 5095737,  
 at \*7 (D. Colo. July 22, 2019) (collecting cases) (“[T]he Court concludes that the Colorado  
 Supreme Court would require that a negligent misrepresentation claim be grounded in affirmative  
 statements.”), with *Elevation 10175, LLC v. Douglas County Ins. Services, Inc.*, No. 19CV30015,  
 2020 WL 11271852, at \*3 (Colo. Dist. Ct. Dec. 01, 2020) (“Though such caselaw is sparse, the  
 court finds sufficient support in the opinions of higher courts to conclude that the negligent  
 omission of information can lead to liability in Colorado.”).

<sup>13</sup> *See Mullen v. Allstate Ins. Co.*, 232 P.3d 168, 174 (Colo. App. 2009) (negligent  
 misrepresentation by omission claim failed where, among other reasons, defendant “was not  
 obligated to provide information”); *Cent. Masonry Corp. v. Bechtel Nat., Inc.*, 857 F. Supp. 2d  
 1160, 1164 (D. Colo. 2012) (“[N]ondisclosure connotes inaction despite a duty”).



1 Virginia,<sup>14</sup> Wisconsin,<sup>15</sup> and South Carolina.<sup>16</sup>

2 A duty to disclose can arise in a variety of circumstances, which can vary by state. For  
3 instance, Arizona looks to the approach outlined in the Restatement (Second) of Torts, under  
4 which liability for nondisclosure is limited to a “party to a business transaction” and only in  
5 specific circumstances. *See* Restatement (Second) of Torts § 551; *In re Arizona Theranos, Inc.,*  
6 *Litig.*, 308 F. Supp. 3d 1026, 1043 (D. Ariz. 2018) (explaining that “Arizona follows the  
7 Restatement (Second) of Tort[s]’ to determine if there is a duty to disclose,” and discussing  
8 Restatement Section 551). In Georgia, a duty to disclose may arise in a “confidential  
9 relationship,” however “no duty to disclose exists when parties are engaged in arm’s-length  
10 business negotiations.” *Infrasource, Inc. v. Hahn Yalena Corp.*, 613 S.E.2d 144, 146 (Ga. Ct.  
11 App. 2005). In Colorado, a “defendant has a duty to disclose to a plaintiff with *whom he or she*  
12 *deals* material facts that ‘in equity or good conscience’ should be disclosed.” *Mallon Oil Co. v.*  
13 *Bowen/Edwards Assocs., Inc.*, 965 P.2d 105, 111 (Colo. 1998) (emphasis supplied) (discussing  
14 also Restatement (Second) of Torts § 551(2)). In New York, defendants can “establish[] their  
15 entitlement to judgment as a matter of law” with respect to duty to disclose “by proof  
16 demonstrating the absence of a confidential or fiduciary relationship between them and the

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18 <sup>14</sup> Compare *Guerin v. Mechanicsville Properties, L.L.C.*, 81 Va. Cir. 184 (Va. Cir. Ct.  
19 2010) (“[C]oncealment can give rise to constructive fraud only in cases in which there is a duty to  
20 disclose the concealed fact.”), with *N. Virginia Eye Inst., P.C. v. Cynosure, LLC*, No. 21-cv-  
00008, 2021 WL 1554887, at \*4 (W.D. Va. Apr. 20, 2021) (“[C]onstructive fraud by concealment  
is not a viable claim under Virginia law . . .”).

21 <sup>15</sup> Compare *Ramsden v. Farm Credit Servs. of N. Cent. Wisconsin ACA*, 590 N.W.2d 1, 5  
22 & n.4 (Wis. Ct. App. 1998) (“[N]egligent failure to disclose may give rise to a claim for relief, if  
23 there is a duty to speak.”), with *Amcore Bank v. Heus Mfg. LLC*, 812 N.W.2d 540, ¶ 22 (Wis. Ct.  
App. 2012) (“It remains an open question in Wisconsin, however, whether a failure to disclose can  
support a claim for negligent misrepresentation.”).

24 <sup>16</sup> It is not clear from the Court’s survey and the parties’ briefing whether South Carolina  
25 recognizes a claim of negligent misrepresentation by omission. If it does not, then plaintiffs’  
26 claim fails. If negligent misrepresentation by omission is actionable under South Carolina law,  
27 then the Court believes it would require a duty to disclose. *See Richardson v. Munninghoff, Lange*  
28 *& Co.*, No. CIV.A10-CV-00124, 2010 WL 3420204, at \*5 (D.S.C. Aug. 23, 2010) (limiting  
plaintiff “to reliance on alleged omissions of material information which these Defendants had a  
duty to disclose” for misrepresentation claim). However, as the Court determines, *infra*, that no  
such duty exists here, this would not change the outcome.

1 plaintiffs.” *Spencer v. Green*, 842 N.Y.S.2d 445 (N.Y. App. Div. 2007).

2 Plaintiffs propose three bases for this Court to find Zuckerberg owed a duty to disclose the  
3 information he purportedly withheld: (i) Zuckerberg’s “exclusive and superior knowledge” of how  
4 Meta’s products harm minors; (ii) Zuckerberg’s “public, partial representations concerning the  
5 safety of Meta’s products”; and (iii) Zuckerberg’s fame and public notoriety. (Dkt. No. 538 at 7–  
6 11.) None of these approaches is supported by any state’s law. In short, plaintiffs cannot rely on  
7 Zuckerberg’s comparative knowledge alone to establish the kind of “confidential” or otherwise  
8 “special” relationship with each plaintiff that these states’ laws require. The Court sets forth the  
9 analysis supporting this conclusion as to each of plaintiffs’ three theories below.<sup>17</sup>

10 First, with respect to “superior knowledge,” all plaintiffs’ cases concern when a duty to  
11 disclose may arise between transacting parties. (Dkt. 538 at 8 & n.10.) For instance, in *Bank of*  
12 *Montreal v. Signet Bank*, the court explained that “when parties are engaged in an arm’s length  
13 transaction,” a “duty to disclose does not normally arise,” but that “a duty may arise” given a  
14 party’s “superior knowledge” of material facts. 193 F.3d 818, 829 (4th Cir. 1999); *see also Dean*  
15 *v. Beckley*, No. 10-cv-297, 2010 WL 3928650, at \*5 (D. Md. Oct. 1, 2010) (explaining how duty  
16 to disclose may arise “even in transactions conducted at arm’s-length”). No plaintiff here pleads  
17 they were transacting or were otherwise engaged with Zuckerberg personally. Thus, plaintiffs fail  
18 to establish a duty to disclose based on “superior knowledge.”

19 Second, the “partial representation” theory fails for similar reasons. Plaintiffs’ cases  
20 (Dkt. No. 538 at 10 & n.12) involve transactions between the speaker and a listener or someone  
21 with a special relationships. *See, e.g., LiMandri v. Judkins*, 52 Cal. App. 4th 326, 336–37 (Cal.  
22 App. Ct. 1997) (aside from fiduciary relationships, “[e]ach of the other three circumstances in  
23 which nondisclosure may be actionable presupposes the existence of some other relationship  
24 between the plaintiff and defendant in which a duty to disclose can arise”); *DiMichele v. Perrella*,  
25 120 A.3d 551, 554 (Conn. App. Ct. 2015) (noting that a “party who assumes to speak must make a

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27 <sup>17</sup> None of the plaintiffs’ SFCs or PFSs alleges a relationship with Zuckerberg beyond the  
28 fact that the plaintiff used his company’s platform and may have occasionally heard him on public  
broadcast.

1 full and fair disclosure” but qualifying that the existence of “a duty to disclose depends on the  
2 relationship of the parties” and whether “the parties share a ‘special relationship’”). Again,  
3 plaintiffs have not pled any relationship—let alone a “special” one—between themselves and  
4 Zuckerberg. This theory fails.

5 Third, with respect to the theory focused on Zuckerberg’s public stature, plaintiffs cite  
6 *Berger v. Sec. Pac. Info. Sys., Inc.*, 795 P.2d 1380, 1383 (Colo. App. 1990). That case concerned  
7 a company and a plaintiff-employee’s hiring and termination. The court found that “a person has  
8 a duty to disclose to another with whom he deals facts that ‘in equity or good conscience’ should  
9 be disclosed.”

10 Plaintiffs use this broad language to extrapolate a claim here. They argue, on the one hand,  
11 that Zuckerberg “was the trusted voice on all things Meta” and “remained an approachable  
12 resource to the public,” and, on the other hand, that he accepted Meta’s duty to its customers “[b]y  
13 cultivating his roles in public life as both the embodiment of Meta and Silicon Valley’s  
14 approximation of a philosopher king.” (Dkt. No. 538 at 9–10.) Specious allusions to Plato aside,  
15 plaintiffs have not provided case law to support this interpretation of the *Berger* standard, nor have  
16 they meaningfully grappled with the expansion of state tort law that would result were the Court to  
17 recognize the duty they identify. To that end, plaintiffs’ theory would invert the states’  
18 “confidential” or “special” relationship requirements by creating a duty to disclose for any  
19 individual recognizable to the public. The Court will not countenance such a novel approach here.

20 Presenting no viable theory of misrepresentation by omission, plaintiffs’ claims against  
21 Zuckerberg therefore fail. Defendant’s motion to dismiss is **GRANTED** as to plaintiffs’ claims of  
22 fraudulent misrepresentation by omission or nondisclosure under the laws of Arizona, Colorado,  
23 Connecticut, Georgia, Maryland, New York, North Carolina, Ohio, Pennsylvania, South Carolina,  
24 Texas, Virginia, and Wisconsin, and as to plaintiffs’ claims of negligent misrepresentation by  
25 omission under the laws of Arizona, Connecticut, Colorado, New York, Pennsylvania, South  
26 Carolina, Texas, Virginia, and Wisconsin.

27 Accordingly, neither Count 8 nor Count 9 of the SAC survive as against Zuckerberg.  
28 However, the Court will provide plaintiffs with *limited* leave to amend their pleading as discussed

1 in the next section.

2 **IV. CORPORATE OFFICER LIABILITY**

3 At argument on Zuckerberg’s motion to dismiss and in certain of their briefs, plaintiffs  
4 appear to belatedly assert a new theory of corporate officer liability against Mark Zuckerberg on  
5 the grounds that he participated in or authorized Meta’s allegedly tortious misrepresentations and  
6 failures to disclose. (*See, e.g.*, Dkt. No. 669, Tr. of Feb. 23, 2024 Case Management Conference  
7 at 41:8–42:15 (discussing *In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Pracs., & Prod.*  
8 *Liab. Litig.*, 295 F. Supp. 3d 927 (N.D. Cal. 2018)).)

9 Generally speaking, under Federal Rule of Civil Procedure 15(a), “leave to amend shall be  
10 freely given when justice so requires.” *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 892  
11 (9th Cir. 2010). When dismissing a complaint, “a district court should grant leave to amend even  
12 if no request to amend the pleading was made, unless it determines that the pleading could not  
13 possibly be cured by the allegation of other facts.” *Pajas v. Cnty. of Monterey*, No. 16-cv-00945-  
14 LHK, 2016 WL 3648686, at \*5 (N.D. Cal. July 8, 2016) (quoting *Lopez v. Smith*, 203 F.3d 1122,  
15 1127 (9th Cir. 2000)). That said, this is a complicated MDL and deadlines have been imposed to  
16 allow for parallel tracks.

17 Given the insufficient briefing, the Court cannot conclude that plaintiffs’ nascent theory of  
18 corporate officer liability is fatally flawed. Thus, the Court therefore **GRANTS** plaintiffs leave to  
19 amend, subject to the following limitations: the plaintiffs in the above-referenced 25 cases stating  
20 claims against Zuckerberg personally are permitted to file one consolidated addendum to their  
21 SFCs that points to relevant existing allegations and sets forth any additional allegations  
22 concerning Zuckerberg’s role as a corporate-officer participant in the conduct charged under  
23 Counts 8 and 9 of the SAC. Such plaintiffs shall provide an appropriate degree of precision as to  
24 the relevant facts alleged and claims asserted so that defendant receives adequate notice of their  
25 theory of liability.

26 The parties shall meet and confer to propose deadline for the most efficient approach to  
27 deal with the limited round of additional briefing and/or amendments. The parties shall be  
28 prepared to address the issue at the next case management conference.

**V. CONCLUSION**

For the foregoing reasons and as set forth herein, the Court **GRANTS** defendant Mark Zuckerberg's motion to dismiss **WITH LEAVE TO AMEND**.

This terminates Dkt. No. 518.

**IT IS SO ORDERED.**

Dated: April 15, 2024

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT JUDGE

United States District Court  
Northern District of California

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