NOT FOR PUBLICATION

FILED

OCT 30 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SHARED PARTNERSHIP, Plaintiff - Appellant, v. META PLATFORMS, INC., Defendant - Appellee.	No. 25-2612 D.C. No. 3:22-cv-02366-RS MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Richard Seeborg, District Judge, Presiding

Argued and Submitted August 12, 2026
San Francisco, California

Before: LEE, MENDOZA, JR., and DE ALBA, Circuit Judges.

Shared Partnership appeals the district court's summary judgment for Meta Platforms, Inc. We review the decision de novo, "view[ing] the evidence in the light most favorable to the nonmoving party." *Animal Legal Def. Fund v. U.S. FDA*, 836 F.3d 987, 988–89 (9th Cir. 2016) (en banc) (per curiam). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

The district court did not err in granting summary judgment for Meta on Shared's misrepresentation claims. A misrepresentation claim accrues when the plaintiff discovers "the facts constituting the fraud." Cal. Code Civ. Proc. § 338(d). "A plaintiff need not be aware of the specific 'facts' necessary to establish the claim"; suspicion that "someone has done something wrong to her" is enough. *Jolly v. Eli Lilly & Co.*, 751 P.2d 923, 927–28 (Cal. 1988). In other words, the clock starts to run when the plaintiff "is aware of her injury" and "suspects or should suspect that her injury was caused by wrongdoing." *Id.* at 1109–10; *see Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 797, 807 (2005) (statute of limitations begins to run when a plaintiff suspects or should have suspected "the 'generic' elements of wrongdoing, causation, and harm" (citing *Norgart v. Upjohn Co.*, 21 Cal. 4th 383, 397 (1999))); *accord Gonzalez v. Planned Parenthood of L.A.*, 759 F.3d 1112, 1116–17 (9th Cir. 2014).

Here, all agree that Shared's misrepresentation claims are subject to a three-year statute of limitations. Cal. Code Civ. Proc. § 338(d). That period is extended by 178 days based on California's tolling for COVID-19. Cal. R. Ct. app. I, Emergency rule 9(a). Because Shared sued on April 15, 2022, its claims are untimely if they accrued before October 19, 2018. The facts show that Shared's claims accrued well before then. And Shared has not excused its failure to discover the supposed fraud within the limitations period.

Shared claims that Meta—starting sometime in 2016—failed to live up to its promise that it would follow its "Steps to Take" provision, which allegedly requires Meta to provide customized messages when it rejects Shared's proposed advertisements. In other words, long before October 19, 2018, Shared knew that Meta was allegedly engaged in "wrongdoing" by not adhering to its "Steps to Take" provision. *Jolly*, 751 P.2d at 927. Indeed, Shared received thousands of ad-rejection messages with allegedly inadequate explanations starting in 2016. But it did not sue until six years later. The statute of limitations thus bars Shared's misrepresentation claims.

Shared tries to evade the statute of limitations by invoking the delayed-discovery rule. Under that doctrine, Shared has the burden to "plead[] and prove[] that a reasonable investigation . . . would not have revealed a factual basis" for the claim; only then could a court toll the statute of limitations "until such time as a reasonable investigation would have revealed [the cause of action's] factual basis." *Fox*, 110 P.3d at 917. Shared argues that there are disputed facts about whether a reasonable investigation before October 2018 would have revealed that Meta "knowingly misrepresented" what information it would provide. Thus, Shared says, its fraud claims did not accrue "until the fall of 2020" when, based on press coverage, it had a "lightbulb moment" "that Meta knew it could not provide the information required."

That argument is unavailing. Shared had received thousands of purportedly deficient ad-rejection emails over a period of years. Moreover, the California Supreme Court has rejected Shared's argument that it needed to be on inquiry notice of each granular element of its claim—here, scienter. *Fox* held that the plaintiff need suspect only "wrongdoing, causation, and harm." 110 P.3d at 920; *see also Jolly*, 751 P.2d at 927 ("[T]he statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was caused by wrongdoing."). Thus, "[r]ather than examining whether the plaintiffs suspect facts supporting each specific legal element of a particular cause of action, we look to whether the plaintiffs have reason to at least suspect that a type of wrongdoing has injured them." *Fox*, 110 P.3d at 920 (rejecting an element-by-element approach similar to the one advocated by Shared as "hypertechnical"). In short, Shared was on actual and constructive notice of the "factual basis" for its claim long before October 2018.

Shared alternatively invokes the continuous-accrual doctrine. This doctrine "posits that a cause of action challenging a recurring wrong may accrue not once but each time a new wrong is committed." *Aryeh v. Canon Bus. Sols., Inc.*, 292 P.3d 871, 873 (Cal. 2013). Thus, "a series of wrongs or injuries may be viewed as each triggering its own limitations period." *Id.* at 875. For example, "a gas and oil lease calling for monthly payments [would] create[] a severable, recurring obligation, with each monthly payment triggering its own statute of limitations." *Id.* at 881 (citing

Armstrong Petrol. Corp. v. Tri-Valley Oil & Gas Co., 11 Cal. Rptr. 3d 412, 422–23 (Cal. Ct. App. 2004)). Relevant here, however, "[t]he context of continuing . . . accrual for periodic breach is to be distinguished from that of a single breach or other wrong which has continuing impact." *Armstrong Petrol. Corp.*, 11 Cal. Rptr. 3d at 423. In sum, when a plaintiff's claims are based on "a single fraud committed at contract formation," the continuous-accrual doctrine does not apply. *Aryeh*, 292 P.2d at 882.

That distinction is critical because the allegedly fraudulent misrepresentation here was contained within an initial contract that broadly governed the parties' relationship. Shared entered into a master agreement to comply with the Self-Serve Ad Terms. The Self-Serve Ad Terms require that ads comply with Meta's Advertising Policies, which included the "Steps to Take" provision that is at issue here. Critically, the Self-Serve Ad Terms "apply" broadly to the entirety of an advertiser's "use of Facebook Products," as well as all the "Orders" they place. Then, when an advertiser wishes to purchase an ad, they separately "place an Order" "through the Self-Serve Ad Interface[]."

In this way, the Terms expressly contemplate that an advertiser can place multiple orders over time, all governed by this single, overarching contract. The language of Meta's Advertising Policies and the Self-Serve Ad Terms made it apparent Shared and Meta entered into a single contract which governed individual

orders. Even more important, that initial contract was the alleged source of the claimed misrepresentation. Shared's own complaint locates the fraud in a single contract, namely, the Self-Serve Ad Terms. Accordingly, the district court did not err in concluding that Shared did not establish the continuous-accrual exception to the statute of limitations.

And even if Shared's fraud claims were timely, Shared waived its fraud claims through its course of conduct over multiple years. "[W]here a party's conduct is so inconsistent with the intent to enforce a legal right, the intention to give up that right will be presumed." *Oakland Raiders v. Oakland-Alameda Cnty. Coliseum, Inc.*, 51 Cal. Rptr. 3d 144, 157 (Cal. Ct. App. 2006) (emphasis omitted); *accord Intel Corp. v. Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1559 (9th Cir. 1991). Here, the record shows that Shared's actions were "inconsistent" with any "intent to enforce" its claimed rights against Meta. *Oakland Raiders*, 51 Cal. Rptr. 3d at 157. Shared continued to use Meta's advertising services extensively for years, despite receiving thousands of ad-rejection emails that—according to Shared itself—it viewed as violating Meta's "Steps to Take" provision. Yet Shared did not assert its purported right to receive more detailed ad-rejection messages, nor did it even "go[] back to Meta and [tell] [it] . . . you didn't provide what was required." To the contrary, Shared submitted hundreds of thousands of ads to Meta.

AFFIRMED.