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TWITCH INTERACTIVE, INC. and
SAMANTHA BRIASCO-STEWART

IN THE UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF CALIFORNIA

BO SHANG,

Plaintiff,

v.

TWITCH INTERACTIVE, INC. and
SAMANTHA BRIASCO-STEWART,

Defendants.

Case No. 3:24-cv-6664-JSC

(Removed from San Francisco County
Superior Court, Case No. CGC-24-617303)

**DEFENDANTS TWITCH
INTERACTIVE, INC. AND SAMANTHA
BRIASCO-STEWART'S OPPOSITION
TO PLAINTIFF'S MOTION TO AMEND**

Hon. Jacqueline S. Corley

DAVIS WRIGHT TREMAINE LLP

I. INTRODUCTION & BACKGROUND

Plaintiff Bo Shang's claims against Defendants Twitch Interactive, Inc. ("Twitch") and Samantha Briasco-Stewart (collectively, "Defendants") are patently frivolous. Recognizing that his Complaint is based on indisputably meritless legal theories, Plaintiff has filed a Motion to Amend his Complaint. *See* Dkt. 20 ("Mot."). Plaintiff's new filing is easily dispatched. The Motion is an identical copy of Plaintiff's previous Opposition to Defendants' pending Motion to Dismiss. *Compare* Dkt. 16 ("MTD Opp.") *with* Mot. As addressed below and in Defendants' Reply Brief in support of its pending Motion to Dismiss, *see* Dkt. 17 ("Reply"), the Court should deny leave to amend. Plaintiff cannot allege any valid claim and no amendment can cure those defects.

II. PROPOSED AMENDED COMPLAINT

Plaintiff requests leave to amend to remove his First and Fourteenth Amendment claims and to assert the following additional factual allegations: (1) Plaintiff was denied First Amendment privileges while incarcerated at Tewksbury mental health hospital and that the "Federal government has a tough time maintaining 14th Amendment rights when dealing with Twitch victims"; (2) alleged failures by the FBI and California police to investigate users of Twitch's platform for actions in connection with an "illicit cryptocurrency gambling platform";¹ (3) Ms. Briasco-Stewart committed perjury during the restraining order proceedings when she wrote that she felt threatened and uncomfortable by Plaintiff's repeated communications; (4) Plaintiff allegedly suffers from "attacks or bugs [which] mysteriously grow in frequency when the Plaintiff is making Twitter or LinkedIn posts relating to Twitch"; and (5) "Twitch and the police jointly decided to play an illegal 'practical joke' on the Plaintiff" to allegedly edit documents in his Google Drive. *See generally* Mot.

¹ It is unclear what alleged "illicit cryptocurrency gambling platform" Plaintiff is referring to or how these allegations relate to Twitch or Ms. Briasco-Stewart. Twitch is a livestreaming service for broadcasting and sharing user-generated content. It does not operate a gambling platform. Nor does Plaintiff allege that Twitch is operating a gambling platform.

III. ARGUMENT

Although courts have wide discretion in determining whether to grant leave to amend, a court should deny leave where a proposed amendment would be futile. *See, e.g., Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008) (denying leave to amend based on futility); *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004) (“Futility alone can justify the denial of a motion to amend.” (internal citation omitted)); *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988) (leave to amend “may be denied if it appears to be futile or legally insufficient). A proposed amended complaint is futile if it would be immediately subject to dismissal. *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1298 (9th Cir. 1998).

Here, leave to amend should be denied because Plaintiff’s allegations are nonsensical and rely on the same frivolous theories asserted in the Complaint, and any amendment would be futile. *See, e.g., Hurtado v. Wells Fargo Bank*, 2024 WL 1946681, at *2 (N.D. Cal. Apr. 17, 2024) (dismissing complaint without leave to amend where the allegations were “nonsensical and ‘consist of incomprehensible rambling’ . . . and fail to state a claim on which relief may be granted”); *Podgorny v. Ally Finance*, 2022 WL 672676, at *3 (D. Ariz. Mar. 7, 2022) (dismissing without leave to amend where Plaintiffs’ “allegations show Plaintiffs’ claims are based on frivolous theories, not plausible legal claims”). Plaintiff continues to attempt to hold Defendants liable based on conspiracy theories fueled by his psychological disorders, mental illnesses, and drug abuse, and alleged conduct by unrelated third parties.

Even if Plaintiff’s wild allegations were plausible (and understandable), Defendants cannot be liable for conduct Plaintiff encountered at a state mental health hospital. The same is true of “attacks or bugs” he allegedly encounters when commenting online about Twitch, law enforcement’s alleged failure to investigate a “cryptocurrency gambling platform,” or the “joke” law enforcement played on him by allegedly editing documents in his Google Drive. *See generally* Mot. These allegations are not relevant to any conduct by Defendants. Furthermore, these new allegations are insufficient to overcome Section 230 immunity or First Amendment protections. *See, e.g., King v. Facebook, Inc.*, 572 F. Supp. 3d 776, 795 (N.D. Cal. 2021) (dismissing claims barred by Section 230 with prejudice because “it would be futile for

[Plaintiff] to try to amend the claim[s]"). Plaintiff's explanation for why he believes Ms. Briasco-Stewart committed perjury is also nonsensical. *See* Dkt. 19 (Plaintiff's Response to OSC to Identify Causes of Action). In sum, Plaintiff cannot allege any viable claims against either Twitch or Ms. Briasco-Stewart. *See Reddy v. Litton Indus., Inc.* 912 F.2d 291, 296 (9th Cir. 1990).

IV. CONCLUSION

For the above reasons and for the reasons set forth in Defendants' Motion to Dismiss, the Defendants respectfully request that the Court deny Plaintiff's Motion for Leave to Amend because "any proposed amendment would be futile." *See Reddy*, 912 F.2d at 296.

Dated: November 18, 2024

Respectfully Submitted,

DAVIS WRIGHT TREMAINE LLP

By: /s/ Megan C. Amaris
Sanjay Nangia
Megan C. Amaris

Attorneys for Defendants
TWITCH INTERACTIVE, INC. and
SAMANTHA BRIASCO-STEWART

CERTIFICATE OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Davis Wright Tremaine LLP, 50 California Street, 23rd Floor, San Francisco, CA 94111. On November 18, 2024, I served the within document(s):

- **DEFENDANTS TWITCH INTERACTIVE, INC. AND SAMANTHA BRIASCO-STEWART'S OPPOSITION TO PLAINTIFF'S MOTION TO AMEND**

- ☒ BY FIRST CLASS MAIL: By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- ☒ BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address valeriefoo@dwt.com to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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In Pro Per

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made. Executed on November 18, 2024, at San Francisco, California.

Valerie Foo