UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BO SHANG,

Plaintiff,

v.

TWITCH INTERACTIVE, INC.,

Defendant.

Case No. 24-cv-06664-JSC

ORDER RE: MOTION FOR LEAVE TO AMEND COMPLAINT AND JOIN ADDITIONAL DEFENDANTS

Re: Dkt. No. 31

The Court previously dismissed Plaintiff's complaint. (Dkt. No. 30.) The dismissal granted Plaintiff leave to file an amended complaint alleging claims against Twitch Interactive, Inc. by February 10, 2025. Instead of filing such an amended complaint, Plaintiff moved for leave to amend his complaint to "clarif[y] Plaintiff's causes of action" and to join Apple Inc. and Alphabet Inc. ("Google") as defendants. (Dkt. No. 31.) Having carefully considered the submissions, the Court concludes oral argument is not required. *See* N.D. Cal. Civ. L.R. 7-1(b). The Court DENIES Plaintiff's motion to join Apple and Google as defendants and DENIES Plaintiff's request to file the proposed FAC. As the proposed amendments as to Twitch do not state a claim, and as further amendment would be futile, the case is dismissed with prejudice.

BACKGROUND

Plaintiff, a Massachusetts resident proceeding without attorney representation, filed this lawsuit in August 2024. (Dkt. No. 1-1.) The case was removed to this court pursuant to federal question jurisdiction. (Dkt. No. 1.) On January 9, 2025, the Court granted Defendants' motion to dismiss with leave to amend the claims against Twitch. (Dkt. No. 30 at 5.) The order also addressed the complaint against Apple that Plaintiff filed on this docket. (Dkt. No. 27.) The Court explained that to sue Apple, "Plaintiff must file the appropriate motion to amend the

complaint and join Apple as a defendant" or "file a separate lawsuit against Apple." (*Id.* at 6.)

On January 12, 2025, Plaintiff filed the pending motion to amend the complaint accompanied by a proposed FAC, which "re-asserts and clarifies claims against Defendant Twitch" and seeks to join Apple and Google as defendants "given the related subject matter and overlapping factual and legal issues." (Dkt. Nos. 31 ¶ 2, 31-1 at 1.) In addition to asserting federal question jurisdiction, the proposed FAC states subject matter jurisdiction arises under 28 U.S.C § 1332 because the amount in controversy exceeds $75,000 and the parties are diverse. (Dkt. No. 31-1 at 2; *id.* at 3 (listing states of incorporation and headquarters for Twitch, Apple, and Google).)

As to Twitch, the proposed FAC proceeds "under California's Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, et seq.) and related theories, clarifying that Twitch's conduct may violate federal and state laws related to potential illegal gambling or money laundering, thereby triggering the 'unlawful,' 'unfair,' or 'fraudulent' prongs of Section 17200." (*Id.* at 2.) As to Apple, the proposed FAC alleges the company rejected "Plaintiff's 'PDF Sage 1.0' for so-called 'Design Spam'" without sufficient explanation; "enforces a draconian reverse engineering clause in its Software License Agreement"; and charges a 30% commission on App Store Sales, "which Plaintiff likens to a private, unauthorized 'tax' in violation of the U.S. Constitution's Article I, § 8 prerogatives." (*Id.* at 3.) And as to Google, the proposed FAC alleges the company "maintains [terms of service] that ban reverse engineering of its machine learning models" and "charges various fees (such as 15-30% in the Google Play Store, or monetization fees on services) that . . . may function similarly to Apple's allegedly unlawful 'private tax.'" (*Id.*)

The proposed FAC includes five causes of action. Count I alleges violations of the unlawful, unfair, and fraudulent prongs of section 17200. (*Id.* at 7-8.) As to the unlawful prong, Plaintiff alleges (1) "Twitch's environment or Terms may facilitate or shield potential gambling and money laundering in violation of 18 U.S.C. §§ 1955, 1084"; (2) the taxes and fees charged by Apple and Google "could violate the Dormant Commerce Clause"; and (3) "All Defendants' [terms of service] banning reverse engineering may contravene established public policy and conflict with recognized fair-use [reverse engineering] caselaw." (*Id.* at 8.) As to the unfair

prong, the proposed FAC repeats similar allegations and adds that "Twitch's platform design may also exploit or exacerbate gaming disorder." (*Id.*) As to the fraudulent prong, the proposed FAC alleges that Apple misled developers through its "repeated 'Design Spam' rejections" and that Twitch misled users by portraying Twitch as a safe environment while "ignoring or enabling large-scale suspicious transactions and potentially fueling addictive behaviors." (*Id.*)

Count II seeks a judicial declaration that "Apple's and Google's license agreements, along with Twitch's [terms of service], contain [reverse engineering] prohibitions that violate public policy, hamper national security, and contravene well-established fair use jurisprudence." (*Id.*)

Count III alleges unconstitutional taxation against Apple and Google, asserting "Apple's 30% commission and analogous Google platform fees operate as a de facto tax." (*Id.* at 9.)

Count IV alleges gross negligence against Apple, asserting "Apple's repeated vague or non-responsive rejections of 'PDFSage 1.0' as 'Design Spam' constitute gross negligence." (*Id.*)

And Count V alleges gross negligence against Apple, asserting "Apple's thrice-pasted, unhelpful, and contradictory rejections confirm a pattern of extremely poor customer service, falling below the standard of care for a trillion-dollar corporation that depends on developer participation for revenue." (*Id.*)

In its opposition to the motion to amend, "Twitch requests that the Court deny Plaintiff's leave to file the Proposed FAC and to dismiss this action in its entirety." (Dkt. No. 35 at 2.)

MOTION TO JOIN

Plaintiff's motion to amend the complaint to join Apple and Google as defendants is DENIED. Under Federal Rule of Civil Procedure 20(a), defendants may be joined in an action when "any right to relief is asserted against them . . . with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and . . . any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a). "Even once these requirements are met, a district court must examine whether permissive joinder would comport with the principles of fundamental fairness or would result in prejudice to either side. *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1296 (9th Cir. 2000) (quotation marks omitted). "A determination on the question of joinder of parties lies within the discretion of the district court."

Corley v. Google, Inc., 316 F.R.D. 277, 282 (N.D. Cal. 2016).

In this case, joinder is improper because Plaintiff has not met the Rule 20(a) "same transaction [or] occurrence" requirement, which "refers to similarity in the factual background of a claim." *Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th Cir. 1997). The thrust of Plaintiff's claim against Twitch is its environment "may facilitate of shield potential gambling and money laundering." (Dkt. No. 31-1 at 8.) There are no similar allegations as to Apple and Google. Plaintiff alleges "Apple's and Google's license agreements, along with Twitch's [terms of service], contain [reverse engineering] prohibitions that violate public policy, hamper national security, and contravene well-established fair use jurisprudence." (Dkt. No. 31-1 at 8.) That three companies allegedly prohibit the same activity does not provide the requisite "shared factual background." *See Coughlin*, 130 F.3d at 1350. Rather, because Plaintiffs' allegations implicate three separate policies/terms of service, joinder is improper. *See Corley*, 316 F.R.D. at 283 ("[J]oinder is not appropriate where different products or processes are involved") (quotation marks omitted); *Heather v. Medtronic Inc.*, No. 2:14-CV-01595-SVW-FF, 2014 WL 2736093, at *1 (C.D. Cal. June 9, 2014) ("The fact that the same [medical] device was used in each plaintiff's surgery is not sufficient to find that they were part of the same transaction or occurrence.").

Plaintiff's argument that joinder is appropriate because "Twitch is hosted on both App Store platforms" is similarly flawed. (Dkt. No. 36.) That Twitch is available on Apple and Google's App Stores does not provide the requisite factual similarity for purposes of Rule 20(a). So, the Court, in its discretion, DENIES Plaintiff's motion to join Apple and Google as defendants. *See* Fed. R. Civ. P. 21 ("On motion or on its own, the court may at any time, on just terms, add or drop a party.").

MOTION TO AMEND

The Court previously dismissed Plaintiff's claims against Twitch with leave to amend. In granting the previous motion to dismiss, the Court observed "the complaint [did] not allege *facts* that plausibly support an inference that Twitch" violated 18 U.S.C. § 1955 (criminalizing illegal gambling) or 18 U.S.C. § 1084 (criminalizing the business of betting over wires). (Dkt. No. 30 at 5.) Plaintiff's proposed FAC is similarly unsupported. Plaintiff "alleges Twitch fosters large-

scale suspicious transactions (e.g., rumored $685 million laundering on a channel known as xQc)." (Dkt. No. 31-1 at 3; *id.* at 8 (alleging Twitch "ignor[es] or enabl[es] large-scale suspicious transactions").) But Plaintiff has not alleged facts supporting a plausible inference that such "large-scale suspicious transactions" occurred. Plaintiff further alleges Twitch's conduct and terms of service prevent "deeper investigations into these potential crimes" but provides no factual support for this conclusory assertion, either. (*Id.*) Likewise, Plaintiff fails to allege facts supporting his assertions that Twitch violates section 17200's unfair and fraudulent prongs by "exploit[ing] or exacerbat[ing] gaming disorder in vulnerable users" through its platform design and portraying itself as a safe environment while "potentially fueling addictive behaviors," respectively. As a result, Plaintiff's proposed FAC fails to state a section 17200 claim against Twitch. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) ("Factual allegations must be enough to raise a right to relief above the speculative level."); *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) ("[T]he non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief.").

The second cause of action seeking declaratory judgment also fails to state a claim.[1] Plaintiff alleges Twitch's terms of service "contain [reverse engineering] prohibitions that violate public policy, hamper national security, and contravene well-established fair use jurisprudence" and seeks "a judicial declaration that the[] [reverse engineering] clause[] [is] void or unenforceable." (Dkt. No. 31-1 at 8.) But Plaintiff has not alleged facts supporting a plausible inference that Twitch's terms of service are void as a matter of public policy. Nor has Plaintiff pled facts to satisfy the "actual controversy" requirement of the Declaratory Judgment Act. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007) (quotation marks omitted) (an actual case or controversy exists when "the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment"). So, dismissal is

[1] Because Counts III through V are brought against Apple and Google, and the Court denied Plaintiff's motion to amend to join Apple and Google, the Court need not address those causes of action.

appropriate. *See Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987) (internal citation omitted) ("A trial court may dismiss a claim sua sponte under Fed. R. Civ. P. 12(b)(6). Such a dismissal may be made without notice where the claimant cannot possibly win relief."); *see also Creech v. Tewalt*, 84 F.4th 777, 787 (9th Cir. 2023) (explaining sua sponte dismissals are permitted under Ninth Circuit precedent).

Moreover, as with the previous complaint, "it is impossible to discern what Plaintiff is alleging" in the proposed FAC. (Dkt. No. 30 at 5.) For example, the complaint contains "additional Twitch-related allegations," including that "a group of Twitch users . . . claiming to be official Twitch engineers . . . repeatedly mocked and berated" Plaintiff and that other Twitch users have made "hostile or hateful remarks." (Dkt. No. 31-1 at 6-7.) These allegations are untethered to a cause of action. Further, the proposed FAC requests the Court "take judicial notice of and condemn the alleged torture and human rights violations perpetrated against Plaintiff by the Massachusetts [Department of Mental Health]" although the Massachusetts Department of Mental Health is not a party to this action. Further, since filing the motion to amend, Plaintiff has filed about a dozen disjointed affidavits and exhibits. (Dkt. Nos. 32-34, 37-46; *see, e.g.* Dkt. No. 44 ("Amusingly the Twitch user who was probably involved in passing the Plaintiff's reuploaded YouTube videos to Woburn District Court probation, obviously committed Title 18 2661A, and possibly one other Title 18 hate crime statute 241, and was 'way back machine' cached by the Plaintiff. The Plaintiff asserts that perhaps this evidence qualifies as unfairly prejudicial under MA Rule 403 . . . .").)

Because Plaintiff's proposed first amended complaint is incoherent, does not remedy the issues identified in the Court's prior order, and fails to state a claim upon which relief can be granted, the Court dismisses the claims against Twitch. The case is dismissed with prejudice. *See Hurtado v. Wells Fargo Bank*, No. 24-CV-01693-LJC, 2024 WL 1946681, at *2 (N.D. Cal. Apr. 17, 2024), *report and recommendation adopted*, No. 24-CV-01693-HSG, 2024 WL 3379678 (N.D. Cal. May 6, 2024) (dismissing complaint with prejudice when there were "no facts or legally coherent theories of liability establishing a claim for relief"); *Bragg v. San Jose Mercury News*, No. C 08-03192 JW, 2008 WL 4810331, at *1 (N.D. Cal. Oct. 30, 2008) (dismissing

complaint without leave to amend when "allegations of the Complaint [were] incoherent and delusional").

CONCLUSION

For the reasons stated, Plaintiff's motion for leave to amend the complaint is DENIED. The Court dismisses the case with prejudice.

This Order disposes of Docket No. 31.

IT IS SO ORDERED.

Dated: February 5, 2025

JACQUELINE SCOTT CORLEY
United States District Judge