SANJAY NANGIA (CA State Bar No. 264986)
sanjaynangia@dwt.com
MEGAN C. AMARIS (CA State Bar No. 336283)
meganamaris@dwt.com
DAVIS WRIGHT TREMAINE LLP
50 California Street, 23rd Floor
San Francisco, California 94111-4701
Telephone: (415) 276-6500
Facsimile: (415) 276-6599

Attorneys for Defendant
TWITCH INTERACTIVE, INC.

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)

DEFENDANT TWITCH INTERACTIVE, INC.'S OPPOSITION TO PLAINTIFF'S MOTION TO FILE FIRST AMENDED COMPLAINT AND TO JOIN APPLE AND GOOGLE

Hon. Jacqueline S. Corley

I. INTRODUCTION & BACKGROUND

Plaintiff Bo Shang, appearing *pro se*, is a former user of Twitch Interactive, Inc. ("Twitch"), who has been stalking and harassing Twitch and its employees for the past five years. *See* Dkt. 8 ("Mot. to Dismiss"). In August 2024, Plaintiff filed a complaint against Twitch asserting various claims based on frivolous conspiracy theories. Twitch moved to dismiss the complaint. The Court granted Twitch's Motion to Dismiss, holding that "it is impossible to discern what Plaintiff is alleging, other than he claims he has been injured by using Twitch." Dkt. 30 at 5. The Court granted Plaintiff leave to amend his claims against Twitch and prohibited Plaintiff from "add[ing] any new defendants without prior leave of Court." *Id.* Plaintiff has now filed a motion to file a first amended complaint ("FAC"), which he has attached to his motion, *see* Dkt. 31-1 ("Proposed FAC"), and to join Apple Inc. ("Apple") and Alphabet Inc. ("Google") as defendants (the "Motion"). *See* Dkt. 31 ("Mot.").

Twitch opposes the Motion because Apple and Google are not properly joined defendants and the Court should, therefore, deny Plaintiff's request to join these additional defendants. Furthermore, while the Court has granted Plaintiff leave to file a first amended complaint against Twitch, the Proposed FAC underscores the frivolousness of Plaintiff's claims and the futility of the amendment. Accordingly, Twitch requests that the Court deny Plaintiff's leave to file the Proposed FAC and to dismiss this action in its entirety.

II. PROPOSED FIRST AMENDED COMPLAINT

Plaintiff requests leave to amend his now-dismissed complaint to assert the following claims against Twitch, Apple, and Google.

Plaintiff asserts a claim for California Unfair Competition Law ("UCL) against Twitch on the following theories. ***First***, Plaintiff alleges Twitch is "violat[ing] federal and state laws related to potential illegal gambling or money laundering." Proposed FAC ¶ 1.2. He further alleges that Twitch's Terms of Service prohibit "reverse engineering," which "hamper[s] user-led security or compliance research, as reverse engineering is integral to analyzing data flows, payment structures, or suspicious patterns." *Id.* ¶ 4.1. Plaintiff also seeks a declaratory judgment that the "reverse engineering" provisions are void and unenforceable." *Id.* ¶ 5.8. ***Second,*** Plaintiff alleges that

Twitch's platform causes the "majority of Twitch users suffer from 'Gaming Disorder.'" *Id.* ¶ 4.7.2. Plaintiff does not allege that he has been diagnosed with Gaming Disorder, that using the Twitch platform caused him to suffer from Gaming Disorder, or a legal basis for establishing liability even if he made such allegations. *See generally id.* ***Third***, Plaintiff alleges that Twitch failed to moderate the actions of a Twitch user named Mark Leon on YouTube and Discord—two completely separate companies and services that are not affiliated in any way with Twitch. *Id.* ¶¶ 4.9.1, 4.9.6. He alleges that Discord took no steps to moderate Mr. Leon's actions despite Plaintiff's attempts to report Mr. Leon's actions to Discord's customer service. *Id.* ¶ 4.9.2. Plaintiff alleges that Twitch's alleged prohibition against reverse engineering prevents him from "hunt[ing] down, expos[ing], or destroy[ing] terrorists or criminals who exploit American technology platforms," like Mr. Leon. *Id.* ¶ 4.9.1.

Plaintiff also asserts three other causes of action against Apple and Google: (1) Illegal Taxation in violation of the U.S. Constitution against Apple and Google, (2) Gross Negligence against Apple for "Apple's 'Design Spam' Reject," and (3) Gross Negligence against Apple for "Extremely Poor Pasting 'Customer Service.'" *See* Proposed FAC ¶¶ 5.6-5.17. He does not assert these causes of action against Twitch. *See generally id.* Plaintiff alleges that Apple's and Google's Terms of Services also include illegal prohibitions on "reverse engineering." *Id.* ¶ 1.1. He also alleges that Apple and Google charge illegal fees on their application stores, Apple App Store and Google Play Store, respectively. *Id.* ¶¶ 4.2-4.3. Lastly, Plaintiff alleges that Apple improperly rejected an application he developed for Apple's App Store. *Id.* ¶ 4.2. When Plaintiff complained to Apple's customer service, they "copy-past[ed] the same vague explanation without actionable detail." *Id.*

Lastly, Plaintiff alleges that he was "allegedly subjected to 11 months of torturous treatment at Tewksbury Hospital by the Massachusetts Department of Mental Health (DMH), involving deliberate misdiagnoses, malpractice, and deception," and that DMH has, therefore, violated the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights. *Id.* ¶ 4.6. DMH is not a party to this action and Plaintiff has not requested to join DMH. *See generally* Mot.

III. ARGUMENT

A. Apple and Google Should Not be Joined as Defendants.

Multiple defendants can only be joined together in the same lawsuit if the claims against them relate to the same transaction or occurrence, or series of transactions or occurrences, and there is any question of law or fact common to all defendants. Fed. R. Civ. P. 20(a); *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."). The same transaction or occurrence is determined by analyzing "whether the essential facts of the various claims are so logically connected that considerations of judicial economy and fairness dictate that all the issues be resolved in one lawsuit." *Hydranautics v. FilmTec Corp.*, 70 F.3d 533, 536 (9th Cir. 1995); *see also Barber v. America's Wholesale Lender*, 289 F.R.D. 364, 367 (M.D. Fla. Feb. 25, 2013) ("The absence of concerted activity [is] fatal to Plaintiffs' attempt at joinder") (citing *Spaeth v. Michigan State University College of Law*, 845 F.Supp.2d 48, 53 (D.D.C. 2012) (stating that plaintiffs "cannot join defendants who simply engaged in similar types of behavior, but who are otherwise unrelated; some allegation of concerted action between defendants is required"). "[J]oinder is not appropriate where different products or processes are involved." *Corley v. Google, Inc.*, 316 F.R.D. 277, 283 (N.D. Cal. 2016) (quoting *In re EMC Corp.*, 677 F.3d 1351, 1359 (Fed. Cir. 2012)).

Here, joinder is improper because Plaintiff's claims against Twitch, Google, and Apple do not arise from the same transaction or occurrence. There are no common facts between the entities that would suggest that the causes of action are logically connected. *See Hydranautics*, 70 F.3d at 536. Plaintiff has, instead, asserted multiple distinct theories of liability against Twitch, Google, and Apple. Indeed, Plaintiff brings negligence and taxation claims against Google and Apple but not against Twitch. The only purportedly overlapping allegation amongst the parties are that their terms of service allegedly prohibit reverse engineering. *See* Proposed FAC ¶¶ 4.1, 5.7-5.8. Yet Plaintiff acknowledges that Twitch, Google, and Apple have different terms of service that apply to completely different products. Plaintiff does not, and cannot, allege "concerted activity" as required under applicable caselaw. Put simply, there is no common transaction or occurrence or question of law or fact that would give rise to joinder. *See* Fed. R. Civ. P. 20(a).

Accordingly, joinder here is improper and Twitch respectfully requests the Court deny Plaintiff's request to join Google and Apple in this action.

B. Plaintiff's Proposed FAC Asserts Frivolous Claims and Any Amendment Would Be Futile.

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 continues to allege the same nonsensical and frivolous theories asserted in his complaint. *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"). Nor do these allegations identify a " cognizable legal theory or sufficient *facts* to support a cognizable legal theory." *See Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008) (emphasis added).

Even if Plaintiff's allegations were plausible (and understandable), his allegations are easily dispatched. ***First*,** Plaintiff does not plausibly allege that Twitch is facilitating gambling or money laundering on its platform. Twitch is a livestreaming service for broadcasting and sharing user-generated content. Twitch does not operate a gambling platform. Nor does Plaintiff allege that it does. Plaintiff also does not allege that he suffers from Gaming Disorder or how he has been harmed by the Gaming Disorder that is allegedly suffered by other Twitch users. *See*

I.C. v. Zynga, Inc., 600 F. Supp. 3d 1034, 1046 (N.D. Cal. 2022) ("A real, existing injury is a prerequisite to federal jurisdiction because 'federal courts do not adjudicate hypothetical or abstract disputes,' nor do they 'exercise general legal oversight ... of private entities.'" (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423-24 (2021)). ***Second***, Plaintiff's claims that Twitch's alleged prohibition against reverse engineering is illegal is nonsensical and unintelligible. Regardless, courts routinely recognize the validity of these types of reverse engineering provisions. *See, e.g.*, *WhatsApp Inc. v. NSO Group Technologies Ltd.*, 2024 WL 5190365, at *8 (N.D. Cal. Dec. 20, 2024) (recognizing that breach of a reverse engineering provision in an internet company's Terms of Service is a valid claim); *Khoros, LLC v. Lenovo (United States), Inc.*, 2020 WL 12655516, at 11 (N.D. Cal. Oct. 5, 2020) (same). ***Lastly***, Plaintiff's claim that Twitch should be liable for Mr. Leon's actions that occurred on another platform or for Discord's failure to moderate Mr. Leon's actions on its own platform is unsupported by the law. Nor could Twitch be liable for actions by Apple or Google, or alleged torture at a state mental health hospital. It is black letter law that "as a general matter, there is no duty to act to protect others from conduct of third parties." *Delgado v. Trax Bar & Grill*, 36 Cal. 4th 224, 235 (2005). Even if Mr. Leon's actions occurred on Twitch's platform, these claims would be barred by Section 230's blanket immunity and the First Amendment. *See, e.g.*, *Estate of Bride v. Yolo Techs., Inc.*, 112 F.4th 1168, 1182 (9th Cir. 2024) (finding Section 230 immunized claims that "attempt to hold [interactive service provider] responsible as speaker or publisher of harassing and bullying speech."); *Moody v. Netchoice, LLC*, 144 S. Ct. 2383, 2401 (2024) (Online publishing platforms enjoy First Amendment rights when engaged in "compiling and curating others' speech."). Accordingly, Twitch respectfully requests the Court deny Plaintiff's request to file his Proposed FAC.

IV. CONCLUSION

For the above reasons, Twitch respectfully requests that the Court deny Plaintiff's Motion for Leave to File a First Amended Complaint and to join Apple and Google.[1]

[1] If the Court is inclined to permit Plaintiff to file his FAC (despite the futility of his claims against Twitch), Twitch intends to file a motion to dismiss Plaintiff's claims with prejudice.

Dated: January 27, 2025

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 January 27, 2025, I served the within document(s):

- **DEFENDANT TWITCH INTERACTIVE, INC.'S OPPOSITION TO PLAINTIFF'S MOTION TO FILE FIRST AMENDED COMPLAINT AND TO JOIN APPLE AND GOOGLE**

☑ BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent to the persons at the e-mail address(es) listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful, on this date January 27, 2025.

Bo Shang
10 McCafferty Way
Burlington, MA 01803
Tel: (617)-618-8279
(781) 999-4101
E-Mail: bo@shang.software

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 January 27, 2025, at San Francisco, California.

Valerie Foo