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4 UNITED STATES DISTRICT COURT5
6 NORTHERN DISTRICT OF CALIFORNIA

7 CHRISTOPHER KING,
8 Plaintiff,
9 v.
10 FACEBOOK, INC., and DOES
11 Defendants.

Case No. [19-cv-01987-WHO](#)

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

Re: Dkt. Nos. 20, 28

12 Section 230(c)(1) of the Communications Decency Act (“CDA,” 47 U.S.C. § 230(c)(1))
13 provides broad immunity for interactive computer services providers against claims that treat the
14 providers as publishers. In this case, pro se plaintiff Christopher King alleges six causes of action
15 against defendant Facebook, Inc. (“Facebook”), all of which are predicated on Facebook’s acts of
16 removing King’s posts from its platform or suspending King’s Facebook account.¹ King alleges
17 Facebook removed multiple posts by him, and temporarily suspended his Facebook access on
18 several occasions in 2018, for posts that Facebook deemed a violation of its terms of service
19 (“ToS”). The crux of his claim is that Facebook has violated its ToS in removing his posts and
20 suspending his account, and that Facebook treats black activists and their posts differently than it
21 does other groups, particularly white supremacists and certain “hate groups.” Because each cause
22 of action accuses Facebook of wrongful acts it took as a publisher, none survives the application
23 of Section 230(c)(1) of the CDA, and Facebook’s motion to dismiss is granted.²

24
25 ¹ King’s six causes of action against Facebook are (1) breach of contract, (2) promissory estoppel,
26 (3) violation of 42 U.S.C. § 1981, (4) fraud, (5) breach of the covenant of good faith and fair
27 dealing, and (6) false and deceptive business practices under Cal. Bus. & Prof. Code. § 17200.
28 See Second Amended Complaint (“SAC”) [Dkt. No. 19] at 27.

² King asserts a seventh cause of action for “Defamation, Internet Stalking, Cyber-Bullying and
Invasion of Privacy” exclusively against “unknown” Doe defendants. This claim is based on his
allegations that these Does posted defamatory statements on Facebook about him and his former

1 **BACKGROUND**

2 **I. FACTUAL BACKGROUND**

3 Facebook runs a web-based social media service with over two billion users. SAC ¶¶ 4,
4 11. King asserts that Facebook is the “World’s largest single alleged protector of Public Speech
5 Rights the World has ever seen,” but has a mission to create a “Nation State” that intends to “crush
6 all competition.” *Id.* ¶¶ 11, 13–14. King is a former civil rights attorney and journalist. *Id.* ¶¶ 9–
7 10. He joined Facebook in or around 2010, and often uses the site to post about his activism. *Id.*
8 ¶¶ 10, 19, 37. He also created the following site: <https://howtosuefacebook.blogspot.com>. *Id.* ¶
9 38.

10 King filed this action to “hold FB accountable to its TOS contractual arrangements.” *Id.* at
11 1. Facebook has a contractual, adhesive set of Terms of Service (“ToS”) for its users, which King
12 claims includes provisions that protect minority users from being punished for using certain terms
13 in a “self-referential” or “empowering way.” *Id.* ¶ 15. He alleges that Facebook removed his
14 access to the service or blocked content he posted on several occasions in 2018 for reasons it
15 labeled as violations of the ToS. In Spring 2018, he “was banned” by Facebook when he posted a
16 complaint regarding a confrontation he had with an attorney where he commented that he “feels
17 like he is being treated like a nigger and cannot fight back physically or he will be at fault.” *Id.* ¶
18 30. On November 2, 2018, Facebook “banned” him again for violating its ToS after plaintiff
19 posted about an argument with a “white male” who “got in his face and dropped 5 F-Bombs.” *Id.*
20 ¶ 31. King posted the sheriff’s report of the incident on Facebook, describing the report as biased
21 and pointing out the race of the witnesses juxtaposed with his own race. *Id.* He was “banned”
22 four to five more times for posting about this incident, including when he uploaded photos of the
23 confrontation and the following text:

24 Nigger, Nigger, Nigger.... How dare you challenge me. I am a white male of some
25 sort of privilege. I can basically spit in your face and drop 5 F-Bombs And the local

26 _____
27 girlfriend “MH” and his current girlfriend “SW.” Those posts were made through Facebook
28 accounts held by users “Troy,” “Facebook User,” and “Lisa Marie.” *Id.* ¶¶ 66–69. King and
Facebook agree that his defamation-claim is asserted only against these Does. *Id.* ¶ 73. There is
no proof that King has served the Doe defendants as of the date of this Order.

1 Sheriff will find a way to ignore it. You stupid nigger.

2 *Id.* at ¶¶ 32–33.

3 King was banned again “on his birthday” for a violation of Facebook’s ToS, and banned
4 again in Fall 2018 for another ToS violation. *Id.* ¶¶ 34–35. He was banned on another occasion
5 for posts referencing Facebook’s banning of “politically progressive rapper Lil B the BASEGOD,”
6 writing that “Facebook gunned down another nigger...” and “we’re dropping like flies around
7 here.” *Id.* ¶ 36. Finally, his blog howtosuefacebook.blogspot.com was blocked from being linked
8 to or shared through Facebook’s “Messenger” service due to an unspecified violation of
9 Facebook’s “Community Standards.”

10 King alleges that Facebook’s treatment of black posters is not equivalent to its treatment of
11 others, alleging that Facebook “has allowed whites to say the same thing that blacks have been
12 banned for.” *Id.* ¶¶ 47–49. He relies on published comments and articles from Facebook users,
13 attorneys, and a former Facebook strategic manager to support his allegation that Facebook treats
14 its black employees and users differently than its white ones, and bans them for the exact sort of
15 activism, content creation, and posting that he himself engages in. *Id.* at 1–3, ¶¶ 17, 22, 25, 26–28,
16 44, 47–48. King alleges that Facebook’s own breach of its ToS is actionable because Facebook’s
17 removal of his posts was in “bad faith” and “retaliatory” based solely on the content of his speech.
18 *Id.* at 1, ¶¶ 24, 38–40.

19 Since the hearing on this motion, King has filed a post-hearing update, explaining more
20 clearly an additional theory of liability; that Facebook has retaliated against him for his speech
21 critical of Facebook. He notes that Facebook has not blocked access to King’s First Amendment
22 page but has blocked access to his How to Sue Facebook page. As of August 20, 2019, Facebook
23 has apparently reversed course and now allows linking to and sharing of King’s How to Sue
24 Facebook page. Dkt. Nos. 33, 40.

25 **II. IPROCEDURAL BACKGROUND**

26 King filed this case on April 12, 2019, days after an action alleging similar claims based on
27 similar allegations was dismissed with prejudice in King County Superior Court (Seattle,
28 Washington). *See* Declaration of William Hicks (“Hicks Decl.”) [Dkt. No. 20-2], Exs. A & B. In

1 that case, filed on November 7, 2018, King asserted three of the same causes of action against
2 Facebook that he alleges here, Violation of 42 U.S.C. § 1981, Breach of Contract, and Promissory
3 Estoppel. Hicks Decl., Ex. A. Those claims were based on materially similar allegations to ones
4 asserted here, that Facebook improperly removed his posts, suspended his account, and
5 discriminated against him and other black activists. Ex. A at 14.

6 In the Washington state court action, King voluntarily dismissed with prejudice his claim
7 for violation of 42 U.S.C. § 1981. Hicks Decl., Ex. B (11.13.2018 Stipulation and Rule 41
8 Dismissal of Sole Federal Claim with Prejudice). The Washington state court dismissed the
9 remaining claims for improper venue and ordered King to pay Facebook’s fees and costs incurred
10 to respond to a premature discovery motion filed before Facebook’s responses were even due. *See*
11 2/21/2019 Order at 2 (“[T]he court is unable to find that plaintiff’s motion was ‘substantially
12 justified or that other circumstances make an award of expenses unjust.’”). The Washington state
13 court entered final judgment against King, denying a motion for reconsideration, on March 25,
14 2019.

15 King filed a First Amended Complaint in this case on April 22, 2019. He filed a Second
16 Amended Complaint – the pleading at issue on this motion to dismiss – on May 23, 2019, to
17 clarify that his seventh (defamation-style) claim is asserted against the unknown Doe defendants
18 who posted the alleged defamatory content about plaintiff and his girlfriends on Facebook.
19 Facebook now moves to dismiss the six claims asserted against it.

20 LEGAL STANDARD

21 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint
22 if it fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to
23 dismiss, the plaintiff must allege “enough facts to state a claim to relief that is plausible on its
24 face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). A claim is facially plausible when
25 the plaintiff pleads facts that “allow the court to draw the reasonable inference that the defendant
26 is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation
27 omitted). There must be “more than a sheer possibility that a defendant has acted unlawfully.” *Id.*
28 While courts do not require “heightened fact pleading of specifics,” a plaintiff must allege facts

1 sufficient to “raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555, 570.

2 In deciding whether the plaintiff has stated a claim upon which relief can be granted, the
3 Court accepts the plaintiff’s allegations as true and draws all reasonable inferences in favor of the
4 plaintiff. *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the court is
5 not required to accept as true “allegations that are merely conclusory, unwarranted deductions of
6 fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir.
7 2008).

8 Pro se complaints are held to “less stringent standards than formal pleadings drafted by
9 lawyers.” *Haines v. Kerner*, 404 U.S. 519, 520 (1972). “[P]articularly in civil rights cases,” the
10 court has an obligation “to construe the pleadings liberally and to afford the [pro se plaintiff] the
11 benefit of any doubt.” *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985) (en banc).
12 However, pro se pleadings must still allege facts sufficient to allow a reviewing court to determine
13 whether a claim has been stated. *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th
14 Cir. 1982).

15 DISCUSSION

16 Facebook argues, dispositively, that all of plaintiff’s claims are barred by Section 230 of
17 the Communications Decency Act, 47 U.S.C. § 230(c)(1). Section 230(c)(1) of the CDA provides
18 full immunity for interactive computer services providers against claims that treat the service
19 provider as publishers of others’ information, which is what Facebook contends King is doing
20 here. Facebook also argues, in the alternative, that King’s claims must be dismissed for failure to
21 plead sufficient facts.

22 Each of King’s claims against Facebook seeks to hold it liable as a publisher for either
23 removing his posts, blocking his content, or suspending his accounts. These types of acts are
24 barred by the immunity provided under Section 230 of the CDA. As the Ninth Circuit has
25 explained, Section 230 of the CDA “immunizes providers of interactive computer services against
26 liability arising from content created by third parties.” *Fair Hous. Council of San Fernando*
27 *Valley v. Roommates.Com, LLC* (“Roommates”), 521 F.3d 1157, 1162 (9th Cir. 2008) (en banc).
28 Under Section 230(c)(1), “providers or user of an interactive computer service shall not be treated

1 as the publisher or speaker of any information provided by another information content provider.”
 2 47 U.S.C. § 230(c)(1).

3 The goal of Section 230(c)(1) is to provide immunity to service providers from
 4 responsibility for posts made by their users and to allow for an editing and moderating process that
 5 does not hold providers liable for all defamatory or otherwise unlawful messages that they did not
 6 edit or delete. *Roommates.com, LLC*, 521 F.3d. at 1163. Section 230(c)(1) immunity extends to
 7 service providers’ activities where they moderate third-party content, such as “reviewing, editing,
 8 and deciding whether to publish or to withdraw from publications third party content.” *Barnes v.*
 9 *Yahoo*, 570 F.3d 1096, 1102 (9th Cir. 2009). The service provider receives full immunity,
 10 regardless of their moderation process. *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1124
 11 (9th Cir. 2003).

12 Numerous courts have applied Section 230(c)(1) at the pleading stage to dismiss the exact
 13 types of claims asserted here by King. *See, e.g., Caraccioli v. Facebook, Inc.*, No. 5:15-cv-
 14 04145-EJD, 167 F. Supp.3d 1056, 1064-66 (N.D. Cal. 2016) (dismissing breach of contract claim
 15 and § 17200 unfair practices claim); *Lancaster v. Alphabet Inc*, No. 15-cv-05299-HSG, 2016 WL
 16 3648608, at *5 (N.D. Cal. July 8, 2016) (dismissing claim for breach of covenant of good faith
 17 and fair dealing); *Jurin v. Google, Inc.*, 695 F. Supp. 2d 1117, 1122–23 (E.D. Cal. 2010)
 18 (dismissing claim for fraud); *Federal Agency of News LLC, et al. v. Facebook, Inc.*, No. 18-CV-
 19 07041-LHK, 2019 WL 3254208, at *3 (N.D. Cal. July 20, 2019) (dismissing discrimination claims
 20 under Title II and 42 U.S.C. § 1983); *Obado v. Magedson*, 2014 WL 3778261, at *7 (D.N.J. July
 21 31, 2014) (dismissing claim for promissory estoppel), *aff’d*, 612 F. App’x 90 (3d Cir. 2015).

22 Most recently, the Hon. Yvonne Gonzalez Rogers in this District dismissed materially
 23 similar claims with prejudice as barred by the CDA. *Brittain v. Twitter, Inc.*, No. 19-CV-00114-
 24 YGR, 2019 WL 2423375, at *2 (N.D. Cal. June 10, 2019). In that case, the plaintiff alleged that
 25 Twitter improperly suspended his accounts. But as recognized and applied by Judge Gonzalez
 26 Rogers, the CDA protects from liability (1) a provider of an interactive computer service, (2)
 27 whom a plaintiff seeks to treat as a publisher or speaker (3) of information provided by another
 28 information content provider. *Brittain*, 2019 WL 2423375 at *2.

1 Here, as in *Brittain*, there is no dispute on any of those elements. First, King admits that
2 Facebook is an interactive computer service provider.³ SAC ¶ 4. Second, each of King’s claims
3 seeks to treat Facebook as a publisher, because each is based on Facebook’s provision of the
4 service for use by others or its moderator decisions on which posts to remove or not and which
5 accounts to suspend or not. *Brittain*, 2019 WL 2423375 at *3 (finding that claims that “ultimately
6 arise from Twitter’s alleged decision to suspend” plaintiff’s Twitter accounts “seek to treat Twitter
7 as a publisher under the CDA”); *cf. Fields v. Twitter, Inc.*, No. 16-cv-00213-WHO, 200 F. Supp.
8 3d 964, 972 (N.D. Cal. 2016) (provision of accounts is a publishing decision and claims based on
9 provision of, or failure to suspend, accounts are barred by 230(c)(1)). Third, all of King’s
10 allegations rest on treatment of speakers (who make posts or otherwise provide content) and
11 differential treatment of specific posts made either by himself or by other Facebook users.
12 *Brittain*, 2019 WL 2423375 at *4; *see also Lancaster*, 2016 WL 3648608, at *3 (holding that
13 plaintiff’s own content satisfies the “published by another information content provider” prong of
14 the CDA immunity test).

15 At oral argument, I asked King to explain why – if I followed this line of cases – his claims
16 could survive dismissal. He essentially asked me to depart from these cases and follow instead
17 *Darnaa, LLC v. Google, Inc.*, 15-CV-03221-RMW, 2016 WL 6540452, at *8 (N.D. Cal. Nov. 2,
18 2016), which predated the cases identified above. The only claim that survived dismissal there
19 was one for breach of implied covenant of good faith and fair dealing. *Darnaa* is a very different
20 case than this one. There, the defendant took actions against the economic interest of plaintiff and
21 in favor of defendants’ business partner. *Id.* at *8-9. That did not happen here, and the rationale
22 of *Darnaa* does not save King’s currently alleged claims. Each of King’s currently alleged claims
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25 ³ An “interactive computer service” is “any information service, system, or access software
26 provider that provides or enables computer access by multiple users to a computer server.” 47
27 U.S.C. § 230(f)(2). Many courts have confirmed that Facebook it is an interactive computer
28 service provider. *See Sikhs for Justice “SFJ”, Inc. v. Facebook, Inc.*, 144 F. Supp. 3d 1088, 1093
(N.D. Cal 2015) (holding that Facebook is a platform that “provides or enables computer access by
multiple users to a computer service as required by § 230”); *see also Obado*, 2014 WL 3778261,
at *7.

1 is barred as a matter of law under the CDA.⁴

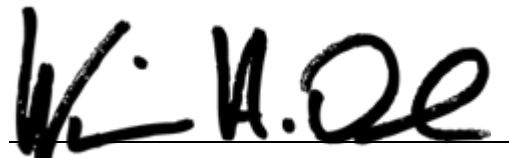
2 King's current claims against Facebook will be dismissed with prejudice. However, King
3 argued at the hearing that he has alleged or could allege more clearly a claim for "retaliatory
4 breach." That claim would not be based on Facebook's discrimination between speakers. Instead,
5 it would be based on Facebook's specific targeting and blocking of King's speech that is critical of
6 Facebook. This theory is the subject of at least two of King's post-hearing submissions. Dkt.
7 Nos. 33, 40. Because this claim is not clearly alleged in the SAC, and given that King is
8 proceeding *pro se*, I give him **limited leave to amend to expressly allege a claim for retaliatory**
9 **breach of the ToS based on the treatment of his speech that is critical of Facebook.**

10 CONCLUSION

11 Facebook's motion to dismiss the claims asserted against it (Claims 1-6) is GRANTED
12 and those currently alleged claims are DISMISED WITH PREJUDICE as barred under the CDA.
13 King is given limited leave to amend within 20 days of this Order to more clearly allege his claim
14 that Facebook engaged in retaliatory conduct by removing his posts or suspending his accounts
15 based on his speech that was critical of Facebook.

16 **IT IS SO ORDERED.**

17 Dated: September 5, 2019

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20 William H. Orrick
United States District Judge

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26 _____
27 ⁴ I do not, therefore, reach Facebook's alternate argument that each claim must be dismissed for
28 failure to allege sufficient facts. I also note, however, that plaintiff's Section 1981 claim of
discrimination is barred because this exact claim was dismissed with prejudice from the
Washington State case, an issue King failed to address in his opposition. *See Cruz v. Select
Portfolio Servicing, Inc.*, No. 19-CV-00283-LHK, 2019 WL 2299857, at *8 (N.D. Cal. May 30,
2019) (dismissing prior-alleged claims due to *res judicata*).