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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
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7 MANUEL ALVAREZ CABELLO  
8 RAMIREZ,

9 Plaintiff,

10 v.

11 BOOST MOBILE/SPRINT,

12 Defendant.

Case No. [17-cv-01404-JSC](#)

**ORDER DISMISSING  
COMPLAINT UNDER SECTION  
1915 WITH LEAVE TO AMEND  
AND DENYING PRELIMINARY  
INJUNCTIONS**

Re: Dkt. Nos. 1, 2, 3, 12

13 Plaintiff Manuel Alvarez Cabello Ramirez, representing himself, brings this civil action  
14 against Boost Mobile, Sprint, and Google (collectively, “Defendants”) for alleged advertising  
15 abuse and patent infringement. (Dkt. Nos. 1, 3.) On March 15, 2017, Plaintiff filed his complaint  
16 accompanied by a motion for preliminary injunction. (Dkt. No. 2.) Subsequently, on May 19,  
17 2017, Plaintiff filed a second motion for preliminary injunction. Having considered the complaint  
18 and two motions, the Court DISMISSES the complaint with leave to amend pursuant to 28 U.S.C  
19 1915, and DENIES Plaintiff’s motions for preliminary injunction without prejudice.<sup>1</sup>

20 **BACKGROUND**

21 Plaintiff alleges he was instrumental in providing software upgrades to Defendants. (Dkt.  
22 No. 3 at 1.) Plaintiff states that in August 2016 he began “producing through Boost Mobile” and  
23 “acquired” Boost Mobile Wallet, Whipit Pay, Google Pay, and PayPal through his Boost Mobile  
24 device. (Id. at 1-2.) Plaintiff alleges he produced “cutting edge technologies using his “apparatus  
25 of communications” including his Motorola Moto Z, phone number 510-850-2699, and email  
26 address [juan27ram@gmail.com](mailto:juan27ram@gmail.com). (Id. at 2.) Plaintiff made “various connects” and “acquired a  
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28 <sup>1</sup> Plaintiff has consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. 636 (Dkt. No. 16.)

1 vast amount of licensed work.” (Id.) He alleges that various communications companies are  
2 aware of his work, but that Defendants “acquire, use, and sell” his “upgraded work.” (Id.)  
3 Plaintiff alleges that Defendants refuse to “acknowledge my person, my needs as a human being,  
4 as a father.” (Id.) He argues that Defendants have violated Section 230(c)(1) of the  
5 Communications Decency Act (“CDA”), which states “No provider or user of an interactive  
6 computer service shall be treated as the publisher or speaker of any information provided by  
7 another information content provider.” (47 U.S.C Section 230(c)(1); Id. at 3.) Plaintiff demands  
8 compensation for “pay/benefits for software upgrades” allegedly provided by Plaintiff and his  
9 phone 510-850-2699. (Dkt. No. 1 at 1.)

10 **LEGAL STANDARD**

11 Under 28 U.S.C. § 1915, the Court has a continuing duty to dismiss any case in which a  
12 party is proceeding in forma pauperis if the Court determines that the action is (1) frivolous or  
13 malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks monetary relief  
14 against a defendant who is immune from such relief.

15 Regarding dismissals for failure to state a claim, Section 1915(e)(2) parallels the language  
16 of Federal Rules of Civil Procedure 12(b)(6). *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir.  
17 2000). The complaint therefore must allege facts that plausibly establish the defendant's  
18 liability. See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007). When the complaint has  
19 been filed by a pro se plaintiff, as is the case here, courts must “construe the pleadings liberally ...  
20 to afford the petitioner the benefit of any doubt.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir.  
21 2010) (citations omitted). Upon dismissal, pro se plaintiffs proceeding in forma pauperis must be  
22 given leave to “amend their complaint unless it is absolutely clear that the deficiencies of the  
23 complaint could not be cured by amendment.” *Franklin v. Murphy*, 745 F.2d 1221, 1235 n.9 (9th  
24 Cir. 1984) (internal citations and quotation marks omitted); *Lopez*, 203 F.3d at 1130-31.

25 **DISCUSSION**

26 **I. Failure to State a Claim**

27 A. Patent Infringement

28 To state a claim of patent infringement, “a plaintiff must allege that the defendant makes,

1 uses, offers to sell, or sells the patented invention within the United States, during the term of the  
2 patent, and without authority of the patent holder.” *Advanced Cardiovascular Sys., Inc. v. SciMed*  
3 *Life Sys., Inc.*, 989 F. Supp. 1237, 1249 (N.D. Cal. 1997). “A claimant is not required to set out in  
4 detail the facts upon which he bases his claim, instead, the complaint need only plead facts  
5 sufficient to place the alleged infringer on notice.” *Systemec Corp. v. Veeam Software Corp.*,  
6 2012 WL 1965832, \*2 (N.D. Cal. May 31, 2012) (citing *Phonometrics, Inc. v. Hospitality*  
7 *Franchise Sys., Inc.*, 203 F.3d 790, 794 (Fed.Cir. 2000).

8 This District has concluded that to “successfully state a claim for direct infringement, a  
9 plaintiff must allege five elements: (1) ownership of the allegedly infringed patent, (2) the  
10 infringer's name, (3) a citation to the patent, (4) the infringing activity, and (5) citations to  
11 applicable federal patent law.” *Kilopass Tech. Inc. v. Sidense Corp.*, C 10–02066 SI, 2010 WL  
12 5141843 (N.D. Cal. Dec.13, 2010) (citing *Phonometrics*, 203 F.3d at 794). Even in the absence of  
13 direct infringement, a “party may still be liable for inducement or contributory infringement of a  
14 method claim if it sells infringing devices to customers who use them in a way that directly  
15 infringes the method claim.” *Systemic Corp.*, 2012 WL 1965832 at 3 (quoting *AquaTex Indus.*,  
16 *Inc. v. Techniche Solns.*, 419 F.3d 1374, 1379 (Fed. Cir. 2005).

17 Plaintiff fails to meet the pleading requirements for patent infringement. Plaintiff has not  
18 cited to the patent he allegedly holds, identified the particular infringing activity, nor provided  
19 citations to the applicable patent law. Plaintiff fails to say specifically what his patent is, and what  
20 work that patent protects. “Patent infringement” or “copyright infringement” is not a claim upon  
21 which relief can be granted.

22 B. Advertising Abuse

23 Plaintiff fails to identify the applicable law under which he alleges advertising abuse. In  
24 the event that Plaintiff intends to bring advertising abuse under California law, he must “(1)  
25 establish a loss or deprivation of money or property sufficient to qualify as injury in fact, i.e.,  
26 economic injury, and (2) show that economic injury was the result of, i.e., caused by, the unfair  
27 business practice or false advertising that is the gravamen of the claim.” *Kwikset Corp. v.*  
28 *Superior Court*, 51 Cal. 4th 310, 322 (2011); see also Cal. Bus. & Prof. Code § 17204.

1 Advertising abuse is also prohibited by federal law. The Lanham Act requires: (1)  
2 a false statement of fact by the defendant in a commercial advertisement about its own or  
3 another’s product; (2) the statement actually deceived or has the tendency to deceive a substantial  
4 segment of its audience; (3) the deception is material, in that it is likely to influence the purchasing  
5 decision; (4) the defendant caused its false statement to enter interstate commerce; and (5) the  
6 plaintiff has been or is likely to be injured as a result of the false statement, either by direct  
7 diversion of sales from itself to defendant or by a lessening of the goodwill associated with its  
8 products. *Skydive Ariz., Inc. v. Quattrocchi*, 673 F.3d 1105, 1110 (9th Cir. 2012).

9 Plaintiff fails to state a claim under the California Business Code as he has not identified  
10 an injury, loss of money or property, nor has he pled that Defendants engaged in an unfair  
11 business practiced that caused him economic injury. Plaintiff also fails to state a claim under the  
12 Lanham Act, as he has not identified that Defendants have made a false statement by which  
13 Plaintiff was actually deceived, nor that the deception influenced his purchasing decisions.

14 C. Communications Decency Act

15 Section 230 of the CDA states that, “[n]o provider or member of an interactive computer  
16 service shall be treated as the publisher or speaker of any information provided by another  
17 information content provider.” 47 U.S.C. § 230(c)(1). The CDA was enacted for two policy  
18 reasons, “to promote the free exchange of information and ideas over the Internet and to encourage  
19 voluntary monitoring for offensive or obscene material.” *Carafano v. Metrosplash.com, Inc.*, 339  
20 F.3d 1119, 1122 (9th Cir. 2003). “In light of these concerns, reviewing courts have treated §  
21 230(c) immunity as quite robust, adopting a relatively expansive definition of ‘interactive  
22 computer service’ and a relatively restrictive definition of ‘information content provider.’” *Id.* §  
23 230(b)(1)(2). Here, Plaintiff has identified the CDA as a potential claim, however, the CDA is  
24 used as a tool for immunity by interactive computer services. Furthermore, Plaintiff has failed to  
25 identify what information was provided. Therefore, Plaintiff has failed to plead a CDA claim.

26 **II. Motions for Injunctive Relief**

27 Plaintiff filed two motions for injunctive relief, the first with his complaint on March 15,  
28 2017, and the second on May 19, 2017. As discussed above, Plaintiff has failed to state a claim

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upon which relief can be granted. Accordingly, the Court DENIES Plaintiff's motions for injunctive relief without prejudice.

**CONCLUSION**

For the reasons discussed above, the Court DISMISSES the complaint with leave to amend pursuant to 28 U.S.C 1915, and DENIES Plaintiff's motions for preliminary injunction without prejudice. Plaintiff shall file his amended complaint by July 3, 2017. Plaintiff is warned that failure to comply with this deadline will result in dismissal of his complaint with prejudice. The Case Management Conference on June 15, 2017 is vacated.

This order disposes of Docket Nos. 1, 2, 3, and 12.

**IT IS SO ORDERED.**

Dated: June 12, 2017

  
JACQUELINE SCOTT CORLEY  
United States Magistrate Judge

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MANUEL ALVAREZ CABELLO  
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BOOST MOBILE/SPRINT,

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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 12, 2017, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Manuel Alvarez Cabello Ramirez ID: Reg. No. 76086-097  
FCI Herlong  
P.O. Box 800  
Herlong, CA 96113

Dated: June 12, 2017

Susan Y. Soong  
Clerk, United States District Court

By:   
Ada Means, Deputy Clerk to the  
Honorable JACQUELINE SCOTT CORLEY