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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHAJAR ABID,
Plaintiff,
v.
GOOGLE LLC,
Defendant.

Case No. [18-cv-00981-MEJ](#)
ORDER RE: MOTION TO DISMISS
Re: Dkt. No. 46

INTRODUCTION

Pending before the Court is Defendant Google LLC’s Motion to Dismiss pursuant to Federal Rule of Civil Procedure (“Rule”) 12(b)(6). Plaintiff Shajar Abid filed an Opposition (Dkt. No. 55)¹ and Google filed a Reply (Dkt. No. 59). The Court previously found this matter suitable for disposition without oral argument. Dkt. No. 60. Having considered the parties’ positions, the relevant legal authority, and the record in this case, the Court **GRANTS** Google’s Motion for the following reasons.

BACKGROUND

For purposes of this Motion, the Court accepts Plaintiff’s factual allegations – as best it can discern them – as true. *See Fields v. Twitter, Inc.*, 881 F.3d 739, 743 (9th Cir. 2018).

A. The Complaint

Plaintiff is an independent researcher, inventor, and entrepreneur. Compl. at 1, Dkt. No. 1. In January 2017, he filed a patent for a “colloidal suspension for the healing of various cancers.”

¹ Plaintiff filed his Opposition on March 29, 2018, one day after it was due. In the interests of justice, the Court considers Plaintiff’s Opposition; however, the Court admonishes Plaintiff that it will not accept late filings in the future.

1 *Id.* Plaintiff describes this product as “a systems biology empirical approach based on prophetic
2 medicine.” *Id.* at 3.

3 Plaintiff established a website, www.mightyhoney.org, to “find people looking for cancer
4 information and help them with this particular knowledge, which in fact is based on prophetic
5 medicine, or [A]rabic herbal medicine[.]” *Id.* at 1. Plaintiff also “ran ads on [G]oogle with
6 common cancer[-]related words[.]” *Id.* His ad stated ““divine cure for cancer.”” *Id.*

7 On March 31, 2017, Plaintiff received an email that his site had been suspended because it
8 was against Google’s policies regarding pharmaceutical sales. *Id.* Upon contacting Google,
9 Plaintiff received instructions to make “a half a dozen modifications” to his ad, including
10 instructions to remove the phrase “divine cure for cancer,” which Plaintiff contends is his
11 “sincerely held religious belief”; the statement that ingredients to his product were “generally
12 recognized as safe”; the phrase “if you have cancer, then . . .”; scientific information; and some
13 medical terminology. *Id.* at 2.

14 Plaintiff revised his advertisement to state his product was a “natural elixir.” *Id.* at 2.
15 Plaintiff sent his advertisement to Google for review. *Id.* Google refused to accept Plaintiff’s
16 revised advertisement. *Id.*

17 On April 6, 2017, Plaintiff initiated this action against Google in the Middle District of
18 North Carolina. *See* Compl. The Complaint appears to assert a claim under 42 U.S.C. § 1983 for
19 violation of Plaintiff’s First Amendment rights. *Id.* at 3. It also references Title VII of the Civil
20 Rights Act of 1964 and alludes to an unspecified antitrust violation. *Id.* at 3 (“or even under the
21 spirit of Title VII of the Civil Rights Act of 1964”); *id.* at 4 (“I am sure there are conspicuous
22 collusions here. That should be looked into under the antitrust laws.”). Plaintiff seeks \$10 billion
23 for violating his First Amendment rights, loss of business, and pain and suffering. *Id.* at 4.
24 Plaintiff also requests “an authorization to be allowed on [G]oogle for when people search for the
25 cure for cancer” and the nullification of an \$88 billion demanding payment. *Id.*

26 **B. Motion to Supplement Pleadings**

27 On April 26, 2017, Plaintiff filed a Motion to Supplement Pleadings, which the North
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1 Carolina court granted.² Mot. to Suppl. Pleading, Dkt. No. 6; R. & R. at 2-3, 9, Dkt. No. 30.

2 The Motion to Supplement Pleadings purports to add as a defendant LegitScript LLC,
3 which Plaintiff describes as “a contractual service provider to Google.” *Id.* ¶¶ 2-4, 12. Plaintiff
4 alleges that on April 10, 2017, LegitScript “yellow flagged” his MightyHoney website as
5 impermissibly advertising a cure for cancer. *Id.* ¶¶ 2, 4, 8 & Ex. 1 (April 10, 2017 email
6 correspondence from LegitScript identifying “problematic claims”).

7 Plaintiff asserts new allegations that Google’s Adwords team agreed to “increase [his]
8 keywords and other technical enhancements” but ultimately deleted Plaintiff’s Google Adwords
9 account. *Id.* ¶ 13; *see id.*, Ex. 2. Plaintiff attaches an email communication from Google which he
10 contends is “proof they breached a contract materially and maybe even deceptively.” *Id.* ¶ 13 &
11 Ex. 2.

12 The Motion to Supplement Pleadings also references the FDA. *See id.* ¶ 10 (“There is also
13 a question about the FDA and its copious regulations.”); *id.* ¶ 14 (“The FDA by onerous, unjust
14 and potentially corrupt regulations, violated my constitutional rights of free speech for which I am
15 entitled to bring a constitutional question . . .”). It does not appear the FDA is named as a
16 defendant.

17 Plaintiff continues to allege Google violated Plaintiff’s First Amendment rights. *Id.* ¶ 16.
18 The Motion to Supplement Pleadings also appears to add (1) a Sherman Act claim, (2) a Clayton
19 Act claim, and (3) a breach of contract claim based on the cancellation of his Adwords account.
20 *Id.* ¶¶ 12-13 & B-C. The Motion to Supplement Pleadings seeks declaratory and injunctive relief
21 and an “order[] so the FDA can’t come after me later.” *Id.* ¶¶ A-B, E.

22 Plaintiff does not identify which claims, if any, are asserted against the FDA. In addition,
23 the Court ordered Plaintiff to show cause why LegitScript should not be dismissed as a defendant
24 in light of Plaintiff’s failure to timely serve it pursuant to Rule 4(m). OSC, Dkt. No. 54. Plaintiff

25 _____
26 ² “As a general rule, when a plaintiff files an amended complaint, the amended complaint
27 supersedes the original, the latter being treated thereafter as non-existent.” *Rhodes v. Robinson*,
28 621 F.3d 1002, 1005 (9th Cir. 2010). However, the North Carolina court granted Plaintiff’s
Motion to Supplement Pleadings and did not require Plaintiff to file an amended Complaint. As
such, the Court will consider the Complaint and the Motion to Supplement Pleadings in this
instance.

1 explains that “LegitScript LLC is not listed as a defendant because Google LLC was responsible
2 and had the human decision making ability.” OSC Resp. at 1, Dkt. No. 61. Plaintiff’s response
3 confirms that LegitScript is not a defendant.

4 **C. Transfer**

5 On February 13, 2018, the North Carolina court granted Google’s motion to transfer the
6 case to this Court. Judgment, Dkt. No. 38; *see* R. & R. (recommending transfer to the Northern
7 District of California). Google thereafter filed the instant Motion.

8 **LEGAL STANDARD**

9 Rule 8(a) requires that a complaint contain a “short and plain statement of the claim
10 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A complaint must therefore
11 provide a defendant with “fair notice” of the claims against it and the grounds for relief. *Bell Atl.*
12 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal quotations and citation omitted).

13 A court may dismiss a complaint under Rule 12(b)(6) when it does not contain enough
14 facts to state a claim to relief that is plausible on its face. *Id.* at 570. “A claim has facial
15 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable
16 inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662,
17 678 (2009). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for
18 more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (quoting *Twombly*, 550
19 U.S. at 557). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need
20 detailed factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to
21 relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a
22 cause of action will not do. Factual allegations must be enough to raise a right to relief above the
23 speculative level.” *Twombly*, 550 U.S. at 555 (internal citations and parentheticals omitted).

24 In considering a motion to dismiss, a court must accept all of the plaintiff’s allegations as
25 true and construe them in the light most favorable to the plaintiff. *Id.* at 550; *Erickson v. Pardus*,
26 551 U.S. 89, 93-94 (2007); *Vasquez v. Los Angeles Cty.*, 487 F.3d 1246, 1249 (9th Cir. 2007). In
27 addition, courts may consider documents attached to the complaint. *Parks Sch. of Bus., Inc. v.*
28 *Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995) (citation omitted).

1 *Glendora*, 207 F.3d 636, 647 (9th Cir. 2000) (“Under § 1983, a claim may lie against a private
2 party who is a willful participant in joint action with the State or its agents. Private persons,
3 jointly engaged with state officials in the challenged action, are acting ‘under color’ of law for
4 purposes of § 1983 actions.” (internal quotation marks omitted)). Moreover, Plaintiff’s
5 Opposition appears to suggest that Google is not the proper defendant and that his claims in fact
6 are against nonparty government entities. Opp’n at 3 (“My section 1983 claim should be applied
7 against the US government, due to the gross negligence of both the FDA and the NIH[;] more than
8 1 year of work has gone into regulation for my small start-up only for FDA to trample my
9 constitutional rights and NIH my civil rights.”). Accordingly, the Court DISMISSES Plaintiff’s §
10 1983 claim. As Plaintiff argues the FDA and NIH violated his rights, not Google, the dismissal
11 shall be WITHOUT LEAVE TO AMEND.

12 **B. Sherman Act Claim**

13 Section 1 of the Sherman Act prohibits “[e]very contract, combination in the form of trust
14 or otherwise, or conspiracy, in restraint of trade or commerce[.]” 15 U.S.C. § 1. “To state a claim
15 under Section 1, a plaintiff must allege facts that, if true, will prove: (1) the existence of a
16 conspiracy, (2) intention on the part of the co-conspirators to restrain trade, and (3) actual injury to
17 competition.” *Coalition For ICANN Transparency, Inc. v. VeriSign, Inc.*, 611 F.3d 495, 501-02
18 (9th Cir. 2010). “It is not enough merely to include conclusory allegations that certain actions
19 were the result of a conspiracy; the plaintiff must allege facts that make the conclusion plausible.”
20 *Name.Space, Inc. v. Internet Corp. for Assigned Names & Numbers*, 795 F.3d 1124, 1129 (9th Cir.
21 2015).

22 Plaintiff does not allege facts showing Google had a contract or agreement with
23 LegitScript or any another entity that was intended to harm or unreasonably restrain competition.
24 At most, Plaintiff alleges LegitScript was Google’s service provider. Mot. to Suppl. Pleadings ¶¶
25 2, 12. But there are no facts showing Google sought to unreasonably restrain trade, let alone
26 succeeded in doing so. Plaintiff argues “Google has been found guilty by the EU for antitrust
27 crimes in 2017[.]” Opp’n at 3; *see* Abid Decl. at 3 (“I have attached proof Google has done anti-
28 trustful things recently and has been punished by the EU.”). Assuming, *arguendo*, the European

1 Union had found Google violated European antitrust laws, Plaintiff does not show how that
2 finding also means Google violated the Sherman Act based on the facts he alleges in his
3 Complaint and Motion to Supplement Pleadings. The Court therefore DISMISSES this claim.

4 **C. Breach of Contract**

5 To state a breach of contract claim under North Carolina law, a plaintiff must show “(1)
6 existence of a valid contract and (2) breach of the terms of that contract.”³ *Bigelow v. Sassafras*
7 *Grove Baptist Church*, 786 S.E.2d 358, 362 (N.C. Ct. App. 2016).

8 Plaintiff attaches to his Motion to Supplement Pleadings email correspondence between
9 “adwards-support@google.com” and “Shaq.”⁴ *Id.*, Ex. 2. The email contains an “authorization
10 form to allow [Google Adwords] to build a new campaign for you called ‘Google Build’” and asks
11 Plaintiff to “respond with ‘YES, I AGREE’ to begin the process.” *Id.* at ECF p.1. Plaintiff
12 responded “agree.” *Id.* at ECF p.2.

13 To the extent this constitutes a valid contract, Plaintiff nevertheless fails to allege facts
14 showing Google breached that agreement. Google Adword’s policies prohibit “the promotion of .
15 . . [n]on-government approved products that are marketed in a way that implies that they’re safe or
16 effective for use in preventing, curing, or treating a particular disease or ailment[.]”⁵ *Mot.*, Ex. 1
17 at ECF pp.18-19 (Advertising Policies).

18 Plaintiff does not assert facts indicating he has received government approval for
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20 ³ For purposes of this Motion, the Court assumes Plaintiff asserts his breach of contract and
21 deceptive practices (*see infra*) claims under North Carolina law, as Plaintiff initiated his action in
22 North Carolina. Plaintiff argues Google “made a gross omission of the pleas under the California
23 Code.” *Opp’n* at 3. However, nothing in the record shows Plaintiff sought to assert a breach of
24 contract claim under California law while the action was pending in the North Carolina court.
25 When the case was transferred, Plaintiff did not seek to amend his Complaint to assert his claims
26 under California law. It was therefore reasonable for Google to proceed as if Plaintiff brought his
27 breach of contract claim under North Carolina law.

28 ⁴ It is unclear whether “Shaq” and Plaintiff are the same person.

⁵ In ruling on a Rule 12(b)(6) motion to dismiss, “[a] court may . . . consider certain materials—
documents attached to the complaint, documents incorporated by reference in the complaint, or
matters of judicial notice—without converting the motion to dismiss into a motion for summary
judgment.” *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). The email Plaintiff
attaches to his Motion to Supplement Pleadings refers to Google Adwords policies. *Mot. to*
Suppl. Pleadings, Ex. 2 at ECF p.2 (“I acknowledge that I am responsible for . . . complying with
AdWords policies. . .”). The Court may therefore consider the Adwords policies.

1 MightyHoney. On the contrary, it appears Plaintiff has not yet done so. *See* Mot. to Suppl.
2 Pleadings ¶ 11 (“I am ready to submit a petition to make the ‘health claims’ on my label[.]”).
3 Google therefore had no obligation to host Plaintiff’s advertisements on its platform. As Plaintiff
4 fails to allege facts showing breach, the Court DISMISSES this claim.

5 **D. Deceptive Trade Practice**

6 To state a claim under North Carolina’s Unfair and Deceptive Trade Practice Act
7 (“UDTPA”), N.C.G.S. § 75-1.1, “a plaintiff must show: (1) defendant committed an unfair or
8 deceptive act or practice, (2) the action in question was in or affecting commerce, and (3) the act
9 proximately caused injury to the plaintiff.” *Dalton v. Camp*, 353 N.C. 647, 656 (2001). As is
10 relevant here, “[a]cts are deceptive when they possess the tendency or capacity to mislead, or
11 create the likelihood of deception.” *Belk, Inc. v. Meyer Corp., U.S.*, 679 F.3d 146, 164 (4th Cir.
12 2012), *as amended* (May 9, 2012) (applying North Carolina law) (internal quotation marks,
13 emphasis, and brackets omitted).

14 Though not abundantly clear, it appears Plaintiff alleges a deceptive trade practice claim
15 against Google. *See* Mot. to Suppl. Pleading ¶ 13 (“I also have proof they breached a contract
16 materially and maybe even deceptively.”). To the extent Plaintiff attempts to do so, he fails to
17 allege facts to support such a claim. “[O]nly practices involving some type of egregious or
18 aggravating circumstances are sufficient to violate the UDTPA.” *Belk*, 679 F.3d at 164 (citation
19 omitted). Plaintiff does not identify any egregious or aggravating circumstances to support a
20 UDTPA violation.

21 “[A]ctions for unfair or deceptive trade practices are distinct from actions for breach of
22 contract . . . [;] a mere breach of contract, even if intentional, is not sufficiently unfair or deceptive
23 to sustain an action under” the UDTPA. *Hardin v. York Mem’l Park*, 730 S.E.2d 768, 777 (2012)
24 (internal quotation marks omitted). Without more, Plaintiff’s UDTPA claim cannot be predicated
25 on the alleged breach of contract; Plaintiff does not explain why Google’s refusal to host his
26 MightyHoney ad where that ad was in violation of Google’s policies constitutes “egregious or
27 aggravating circumstances.” Because Plaintiff’s Opposition does not respond to Google’s
28 arguments regarding this claim, Plaintiff concedes this issue. *See Ramirez v. Ghilotti Bros. Inc.*,

1 941 F. Supp. 2d 1197, 1210 & n.7 (N.D. Cal. 2013) (collecting cases holding failure to address, in
2 opposition brief, arguments raised in motion to dismiss constitutes waiver or abandonment of
3 issue). The Court therefore DISMISSES this claim.

4 **CONCLUSION**

5 For the foregoing reasons, the Court finds Plaintiff fails to state any claims against Google
6 and GRANTS the Motion to Dismiss. However, “leave to amend should be granted if it appears at
7 all possible that the plaintiff can correct the defect[.]” *Harris v. Mangum*, 863 F.3d 1133, 1142
8 (9th Cir. 2017) (brackets omitted; internal quotation marks omitted). The Ninth Circuit has
9 emphasized that “opportunities to amend are particularly important for the pro se litigant.” *Id.*
10 (internal quotation marks omitted). Given Plaintiff’s pro se status and as it is not clear at this point
11 that Plaintiff cannot allege the requisite facts, the Court GRANTS Plaintiff LEAVE TO AMEND
12 his Complaint to allege facts in support of the Sherman Act, breach of contract, and/or deceptive
13 practices claims. Plaintiff may not amend his § 1983 claim against Google, as that dismissal is
14 WITHOUT LEAVE TO AMEND. Plaintiff shall file his amended complaint no later than May 4,
15 2018. Plaintiff is warned that failure to file an amended complaint by this deadline shall result in
16 the dismissal of this case with prejudice. The Court will dismiss LegitScript in a separate order.

17 If Plaintiff files an amended complaint, it must comply with the guidelines set forth in Rule
18 8(a). This rule requires that a complaint for relief include (1) a short and plain statement of the
19 grounds for the court’s jurisdiction; (2) a short and plain statement of the claim showing that the
20 pleader is entitled to relief; and (3) a demand for the relief sought. A pleading may not simply
21 allege a wrong has been committed and demand relief; it must state the elements of the claim
22 plainly and succinctly. Plaintiff must allege with at least some degree of particularity the facts in
23 which the defendant(s) engaged to support the claim. *Jones v. Cmty. Redev. Agency*, 733 F.2d
24 646, 649 (9th Cir. 1984).

25 In addition, the Court cannot refer to a prior pleading in order to make Plaintiff’s amended
26 complaint complete. *See Rhodes*, 621 F.3d at 1005; Civ. L.R. 10-1 (“Any . . . amended pleading
27 must reproduce the entire proposed pleading and may not incorporate any part of a prior pleading
28 by reference.”). Once Plaintiff files an amended complaint, neither his original Complaint nor

1 Motion to Supplement Pleading serves any function in the case. Therefore, Plaintiff must
2 sufficiently allege each claim and the involvement of each defendant in his amended complaint.

3 Finally, as Plaintiff is proceeding pro se, he may seek assistance from the Legal Help
4 Center, a free service offered by the Justice & Diversity Center of the Bar Association of San
5 Francisco, by calling 415-782-8982, or by signing up for an appointment on the 15th Floor of the
6 Federal Courthouse, 450 Golden Gate Avenue, San Francisco, California. There is also a Legal
7 Help Center on the 4th Floor, Room 470S, of the United States Courthouse, 1301 Clay Street,
8 Oakland. At the Legal Help Center, you will be able to speak with an attorney who may be able to
9 provide basic legal help but not representation. More information is available at
10 <http://cand.uscourts.gov/helpcentersf>.

11 **IT IS SO ORDERED.**

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13 Dated: April 13, 2018

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15 MARIA-ELENA JAMES
16 United States Magistrate Judge

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