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14 GOOGLE LLC, YOUTUBE, LLC, and
15 ALPHABET INC.

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN JOSE DIVISION

19 MARSHALL DANIELS, also known as Young)
20 Pharaoh, an individual,)
21)
22 Plaintiff,)
23)
24 v.)
25)
26 ALPHABET INC., a Delaware corporation;)
27 GOOGLE LLC, a Delaware limited liability)
28 company; YOUTUBE, LLC, a Delaware limited)
liability company; DOES 1 through 10, inclusive,)
Defendants.)

CASE NO.: 5:20-CV-04687-VKD
**DEFENDANTS' NOTICE OF
MOTION AND MOTION TO
DISMISS FIRST AMENDED
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**
Before: Hon. Virginia K. DeMarchi
Courtroom: 2
Hearing Date: June 8, 2021
Time: 10:00 a.m.

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on June 8, 2021, at 10 o'clock in the morning, before the Honorable Virginia K. DeMarchi of the United States District Court for the Northern District of California, Courtroom 2, Fifth Floor, 280 South 1st Street, San Jose, California, Defendants Alphabet Inc., Google LLC, and YouTube, LLC (“YouTube”) (collectively “Defendants”) shall and hereby do move for an order dismissing with prejudice the breach of contract claim advanced by Plaintiff in his First Amended Complaint (“FAC”). The motion is based upon this Notice of Motion; the supporting Memorandum of Points and Authorities; the pleadings, records, and papers on file in this action; oral argument of counsel; and any other matters properly before the Court.

STATEMENT OF REQUESTED RELIEF

Defendants request that the Court dismiss the FAC without further leave to amend.

STATEMENT OF ISSUES TO BE DECIDED

- 1. Whether Plaintiff’s amended breach of contract claim should be dismissed under Rule 12(b)(6) for failure to state a claim.
- 2. Assuming Plaintiff did not violate the Court’s order by trying to amend the portion of his breach of contract claim challenging YouTube’s removal of his content, whether Plaintiff’s amended breach of contract claim is barred by Section 230(c) of the Communications Decency Act (“CDA”), 47 U.S.C. § 230(c) (“Section 230”).

MEMORANDUM OF POINTS AND AUTHORITIES

In its order dismissing Plaintiff’s original complaint, this Court held that Plaintiff had failed to state a claim for any of the numerous claims he asserted. *See* Dkt. No. 31 (“Order”) at 12, 15-19. The Court further held that Plaintiff’s claims were separately barred by both Section 230(c)(1) and 230(c)(2)(A) of the CDA. *Id.* at 20-22. The Court granted Plaintiff very limited leave to amend—only as to his claim for breach of contract “based on obligations defendants owe to him for SuperChat views and donations under the YouTube Partner Program terms.” *Id.* at 23; *see also id.* at 15, 21-22 (same).

Plaintiff has filed an amended complaint, but his allegations have barely changed. Plaintiff reasserts the same causes of action that the Court dismissed with prejudice (ostensibly,

1 but unnecessarily, to preserve them for appeal), and repackages the same misguided contract
2 theories that this Court rejected as a matter of law. While Plaintiff adds a handful of new
3 allegations about YouTube’s Super Chat feature, none of this addresses the core problem this
4 Court identified with the single claim Plaintiff was given leave to amend: Plaintiff’s failure to
5 identify an agreement governing YouTube’s “alleged withholding of donations owed to him.” *Id.*
6 at 21. As he did in the original complaint, Plaintiff asserts his breach of contract claim based
7 solely on YouTube’s general Terms of Service agreement. But as this Court has recognized, that
8 agreement “do[es] not address any kind of arrangement to pay users based on views and
9 donations.” *Id.* at 15. Plaintiff’s effort to double down on his already rejected approach does not
10 come close to stating a viable contract claim. Because it is clear that Plaintiff has no basis for his
11 contract claim based on the Super Chat feature, dismissal of that claim should now be with
12 prejudice.

13 Plaintiff’s attempt to revive his contract theories relating to YouTube’s removal of his
14 videos also fails. Those theories lie outside the scope of the limited leave to amend this Court
15 granted and are therefore not properly before the Court. But even if they were, Plaintiff’s claim
16 based on his videos’ removal (and notice and appeals concerning the same) is foreclosed for the
17 same reasons set forth in this Court’s prior ruling.

18 **PROCEDURAL BACKGROUND**

19 **A. Plaintiff’s Original Complaint And This Court’s Dismissal Order**

20 In his original complaint (Dkt. No. 1), Plaintiff Marshall Daniels, who goes by the name
21 “Young Pharaoh,” sought to hold Defendants liable based on the theory that, by removing two of
22 Plaintiff’s videos and limiting his ability to monetize videos on his YouTube channel, YouTube
23 violated his First Amendment rights, breached its Terms of Service agreement, and committed
24 various other violations of state law. The Complaint alleged that YouTube removed those two
25 videos, which were titled “George Floyd Riots & Anonymous Exposed as Deep State Psyop for
26 NWO” and “Fauci Silenced Dr. Judy Mikovits from Warning the American Public,” and which
27 Plaintiff acknowledged contained content that “may be offensive to some,” for violating its
28

1 Community Guidelines. Complaint (“Compl.”) ¶¶ 9, 10 & n.3. Defendants moved to dismiss the
2 Complaint. Dkt. No. 18.

3 In a comprehensive ruling issued on March 31, 2021, this Court dismissed the Complaint
4 in its entirety. Order at 22-23. As to Plaintiff’s core constitutional claim, the Court rejected
5 Plaintiff’s theory that statements of two members of Congress expressing concern about online
6 misinformation transformed YouTube’s decisions to remove his videos from its private platform
7 into state action. *See id.* at 10, 12. Turning next to the breach of contract claim, the Court found
8 that YouTube had not breached its Terms of Service (or incorporated policies) by allegedly
9 “(1) failing to inform Mr. Daniels when one of his videos was flagged or removed; (2) failing to
10 provide an appeals process; (3) not permitting Mr. Daniels to post his videos, unless they
11 violated the Community Guidelines; [or] (4) not paying Mr. Daniels based on views and
12 donations.” *Id.* at 13.

13 As to Plaintiff’s notice and appeal allegations, the Court found that the Terms of Service
14 neither contain an “unqualified promise to notify Mr. Daniels when one of his videos is flagged
15 or removed” nor “guarantee an appeals process in any particular form.” *Id.* at 14. In any event,
16 according to Plaintiff’s own allegations, “YouTube did notify him that his videos did not comply
17 with its Community Guidelines and its harassment and cyberbullying policies,” and he did
18 “engage[] in an appeals process for both the Fauci and George Floyd videos, even if those
19 appeals did not resolve to his satisfaction.” *Id.* As to Defendants’ alleged failure to allow
20 Plaintiff to post videos, the Court explained that the Terms of Service make plain that “YouTube
21 is under no obligation to host or serve Content” and that YouTube may remove content in
22 various circumstances. *Id.* In sum, “[b]ecause ‘defendants were given the right to do what they
23 did by the express provisions of the contract there can be no breach.’” *Id.* at 15.

24 As to Plaintiff’s final contract theory based on YouTube’s alleged failure to pay him
25 “based on views and donations,” the Court found that “the Terms of Service do not address any
26 kind of arrangement to pay users based on views and donations.” Order at 15; *see also id.* (“Mr.
27 Daniels does not dispute that the Terms of Service are silent on monetization, including
28 SuperChat views and donations.”). The Court explained that, while “a different contract may

1 govern monetization of YouTube accounts: the YouTube Partner Program,” Plaintiff had “not
2 pled a breach of contract claim based on the YouTube Partner Program agreement, although he
3 may be able to do so if given leave to amend.” *Id.* The Court then dismissed Plaintiff’s remaining
4 state-law claims as “based on precisely the same allegations as his purported breach of contract
5 claim,” and for failure to allege any “unlawful business act or practice.” *Id.* at 16-19.

6 Finally, the Court held that Plaintiff’s claims were barred by two independent provisions
7 of Section 230. First, because “YouTube’s removal of Mr. Daniels’s videos constitutes
8 traditional publishing and editorial activity,” Section 230(c)(1) barred all of Plaintiff’s claims
9 that were “premised on YouTube’s removal of or restriction of access to Mr. Daniels’s videos
10 from its platform.” *Id.* at 20. The Court exempted only Plaintiff’s breach of contract claim: “[T]o
11 the extent Mr. Daniels may be able to state a claim for breach of contract regarding the alleged
12 withholding of donations owed to him, the Court is not prepared to conclude[] at this junction
13 that defendants would be immuni[z]ed from liability for such a claim under Section 230(c)(1).”
14 *Id.* at 21. Second, the Court held that, “except to the extent Mr. Daniels may be able to state a
15 claim for breach of contract regarding YouTube’s failure to pay him based on SuperChat views
16 and donations, . . . Section 230(c)(2)(A) immunity applies to all of his state law claims,” because
17 Plaintiff failed to plausibly allege that YouTube “did not consider the content of [Plaintiff’s]
18 videos objectionable and/or contrary to its stated policies and guidelines.” *Id.* at 21-22.

19 With one narrow exception for a contract claim based on the alleged failure to pay based
20 on Super Chats and donations, the Court dismissed each of Plaintiff’s claims with prejudice. The
21 Court granted Plaintiff an opportunity to amend only that claim, explaining that, “[s]pecifically,
22 the record suggests that Mr. Daniels may be able to state a breach of contract claim based on
23 obligations defendants owe to him for SuperChat views and donations under the YouTube
24 Partner Program terms.” *Id.* at 22-23.

1 **B. Plaintiff’s First Amended Complaint**

2 Notwithstanding the clear language in the Court’s order, the FAC is nearly identical to
3 the original Complaint.¹ See Decl. of Kelly M. Knoll in Support of Defs.’ Mot. to Dismiss FAC
4 (“Knoll Decl.”), Ex. 1 (comparison between original Complaint and FAC). The FAC contains
5 cosmetic changes throughout, but only a handful of new allegations. Plaintiff includes additional
6 background about the Super Chat feature, including allegations about when that feature was
7 introduced and how it supposedly functions. FAC ¶ 19. In support of his breach of contract claim
8 based on that feature, Plaintiff does not identify any additional factual allegations (see FAC
9 ¶¶ 92-99), and he continues to rely exclusively on YouTube’s Terms of Service agreement (see
10 FAC ¶ 93; see also FAC ¶¶ 1-2, 16-17; Ex. A). Plaintiff acknowledges that “the 2019 TOS
11 themselves do not address the issue of the SuperChat function,” but alleges that “YouTube has
12 promised the users of the SuperChat function that there is one situation in which the SuperChat
13 may be demonetized”—“if the creator has been dormant for six months”—and that Plaintiff had
14 not been “dormant” at the time his “SuperChat was demonetized.” FAC ¶¶ 20-21. Plaintiff does
15 not allege any facts about the source of this alleged promise, nor does he invoke the YouTube
16 Partner Program agreement that Defendants and the Court identified as governing YouTube
17 monetization. Order at 15; see also Defs.’ Mot. to Dismiss (Dkt No. 18) at 3, 12-14; Decl. of
18 Lauren Gallo White in Support of Defs.’ Mot. to Dismiss, Ex. 10 (Dkt No. 18-11). In addition,
19 Plaintiff now claims that he was not “provided with any basis for the removal of his SuperChat
20 function” or “with the opportunity for an appeal” (FAC ¶¶ 22, 95), although he does not allege
21

22
23 ¹ Plaintiff acknowledges that “he has only received leave to amend the Fifth Claim for Relief
24 (breach of contract),” which he brought against YouTube and the Doe Defendants alone, and he
25 indicates “[t]he remaining claims for relief are included in this First Amended Complaint only
26 for the purpose of preserving them for appeal.” FAC at 19 n.5. To the extent Plaintiff has
27 nevertheless modified those causes of action (compare, e.g., Compl. ¶¶ 51, 61, with FAC ¶¶ 59,
28 69), that is improper and inconsistent with the limited leave to amend the complaint that this
Court granted. To make the appellate record clear, the Court should strike those allegations, for
which no leave to amend was granted. *Accord Barker v. Avila*, 2010 U.S. Dist. LEXIS 91161, at
*3, *6 (E.D. Cal. Aug. 11, 2010) (striking improper amendment of allegations to claim that was
dismissed with prejudice).

1 that either of these alleged omissions ran afoul of any contractual (or other) promise by YouTube
2 to Plaintiff.

3 ARGUMENT

4 To survive a motion under Rule 12(b)(6), “[t]hreadbare recitals of the elements of a cause
5 of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S.
6 662, 678 (2009). Instead, Plaintiff must allege a claim that “allows the court to draw the
7 reasonable inference that the defendant is liable for the misconduct alleged.” Order at 7 (quoting
8 *Ashcroft*, 556 U.S. at 678). “The Court is not required to ‘assume the truth of legal conclusions
9 merely because they are cast in the form of factual allegations.’” *Id.* at 7 (quoting *Prager Univ. v.*
10 *Google LLC*, 2018 U.S. Dist. LEXIS 51000, at *9 (N.D. Cal. Mar. 26, 2018), *aff’d*, 951 F.3d 991
11 (9th Cir. 2020)). Nor should the Court accept allegations that contradict documents attached to
12 the Complaint or incorporated by reference, *Gonzalez v. Planned Parenthood of L.A.*, 759 F.3d
13 1112, 1115 (9th Cir. 2014), or that rest on “‘unwarranted deductions of fact[] or unreasonable
14 inferences,’” *Sepehry-Fard v. MB Fin. Servs.*, 2014 U.S. Dist. LEXIS 71568, at *4 (N.D. Cal.
15 May 23, 2014).

16 **I. PLAINTIFF AGAIN FAILS TO STATE A CONTRACT CLAIM BASED ON THE** 17 **ALLEGED WITHHOLDING OF SUPER CHAT REVENUES**

18 Plaintiff’s amended contract claim runs into the same problem that this Court identified
19 in dismissing his original contract claim: Plaintiff still has not identified any contractual promise
20 that YouTube supposedly breached by allegedly “fail[ing] to pay Mr. Daniels based on
21 SuperChat views and donations.” Order at 15. On this ground alone, the Court should dismiss
22 Plaintiff’s amended claim without further leave to amend.

23 To state a claim for breach of contract under California law, a Plaintiff must identify not
24 only the contract at issue, but also “allege the specific provisions in the contract creating the
25 obligation the defendant is said to have breached.” *In re Anthem, Inc. Data Breach Litig.*, 162 F.
26 Supp. 3d 953, 978 (N.D. Cal. 2016) (quoting *Young v. Facebook, Inc.*, 790 F. Supp. 2d 1110,
27 1117 (N.D. Cal. 2011)); *see also, e.g., Beecher v. Google N. Am. Inc.*, 2018 U.S. Dist. LEXIS
28 173805, at *5-6 (N.D. Cal. Oct. 9, 2018). But Plaintiff’s amended contract claim still does not

1 identify a contract governing YouTube’s supposed withholding of Super Chat payments, let
2 alone a specific provision. As this Court has already recognized, and as even Plaintiff concedes
3 (*see* FAC ¶ 20), the Terms of Service make no promises about monetization or payments and say
4 nothing about the Super Chat feature. *See* FAC, Ex. A. The Court afforded Plaintiff leave to
5 amend this claim for the *express purpose* of identifying a relevant agreement that could, at least
6 theoretically, support his Super Chat payments theory. *See* Order at 23. Despite this clear
7 direction, Plaintiff failed to cure this defect, and he instead continues to rely on the general
8 Terms of Service as the sole basis for his claim. *See* FAC ¶ 93. Perhaps he recognized that the
9 agreements that actually bear on advertising no more support a contract claim than the general
10 Terms of Service do, but whatever his reasoning, Plaintiff’s effort to reassert the same contract
11 theory that the Court already rejected fares no better this time.

12 Unable to identify any relevant provision of the Terms of Service (or any other
13 agreement) that YouTube breached in connection with Super Chats or donations, Plaintiff
14 vaguely alludes to other supposed statements and promises by YouTube. *See* FAC ¶ 19
15 (“According to YouTube, the majority of the revenue from the SuperChat purchase goes to the
16 channel (i.e., the content creator.”); FAC ¶ 20 (“YouTube has promised the users of the
17 SuperChat function that there is one situation in which the SuperChat may be demonetized: if the
18 creator has been dormant for six months.”). But none of these alleged promises appear in
19 YouTube’s general Terms of Service. *See* FAC, Ex. A; *see also, e.g., Murphy v. Hartford*
20 *Accident & Indem. Co.*, 177 Cal. App. 2d 539, 543 (1960) (“In order for an action to be based
21 upon an instrument in writing, the writing must express the obligation sued upon.”).

22 While the Court need go no further, even if the statements that Plaintiff relies on were
23 contractual in nature, Plaintiff still would not state a viable claim for breach of contract. First,
24 Plaintiff does not allege any factual allegations showing that he did not receive “the majority of
25 the revenue from” (*see* FAC ¶ 19) any particular Super Chat purchase. Indeed, the FAC still does
26 not identify any specific donations or actual sum of money that Plaintiff claims was withheld.
27 Likewise, even if YouTube had guaranteed access to the Super Chat feature unless a creator was
28 dormant for six months (*see* FAC ¶¶ 20-21), that would be irrelevant here. Plaintiff’s theory is

1 based upon YouTube’s supposed withholding of revenue that Plaintiff allegedly earned in
2 connection with Super Chat—not YouTube’s termination of his access to the actual Super Chat
3 feature. *See* FAC ¶¶ 93, 95. And to the extent Plaintiff suggests that YouTube breached the
4 Terms of Service because it offered “no grounds, no explanation, and no opportunity for appeal”
5 (FAC ¶ 95(d)) for withholding Super Chat revenues, Plaintiff does not even purport to identify a
6 promise by YouTube to provide any of those things. *See, e.g.*, FAC ¶ 93 (claiming only that,
7 “[i]n the contract, YouTube agreed to . . . pay Plaintiff based on, among other things, views and
8 donations”).

9 **II. ANY CONTRACT CLAIM RELATING TO THE REMOVAL OF PLAINTIFF’S**
10 **VIDEOS MUST BE DISMISSED**

11 This Court allowed Plaintiff limited leave to file an amended contract claim “based on
12 obligations defendants owe to him for SuperChat views and donations under the YouTube
13 Partner Program terms.” Order at 23; *see also id.* at 15, 21-22. Indeed, this Court already
14 recognized that each of Plaintiff’s contract theories relating to the removal of Plaintiff’s videos is
15 both ungrounded in (or contrary to) the Parties’ agreement (*id.* at 13-15) and was categorically
16 barred by Section 230 (*id.* at 19-22). The Court should not revisit these theories, which it
17 dismissed with prejudice.

18 But even crediting Plaintiff’s apparent belief that he was authorized to amend his breach
19 of contract claim in its entirety (FAC at 19 n.5), the claim yet again fails for the same reasons
20 this Court has already given. Indeed, the amendments made on this point are superficial, and they
21 do nothing to evade this Court’s prior ruling or the clear law that governs these issues. *Compare*
22 FAC ¶ 95, *with* Compl. ¶¶ 85, 87; *see also* Knoll Decl., Ex. 1.

23 First, as to YouTube’s alleged failure to provide sufficient notice of its removal of
24 Plaintiff’s videos, this Court has already held that the Terms of Service do not include any
25 “unqualified promise to notify Mr. Daniels when one of his videos is flagged or removed.
26 Rather, YouTube expressly reserves the option to not provide notification of the reason for
27 removal of a video based on its reasonable belief that certain circumstances apply.” Order at 14.
28 Likewise, as to YouTube’s alleged failure to afford Plaintiff a right to appeal, this Court has

1 explained that the Terms of Service “do[] not guarantee an appeals process in any particular
2 form.” *Id.* Moreover, as the Court has recognized, and Plaintiff’s own allegations continue to
3 make clear (FAC ¶¶ 9-10), YouTube *did* notify him of the reason that it removed the two videos
4 at issue and *did* provide Plaintiff the opportunity to appeal those removals. *See* Order at 14. The
5 FAC offers nothing new on this point.

6 Next, with respect to Plaintiff’s claim based on the decision to remove his videos, this
7 Court explained that multiple provisions of YouTube’s Terms of Service afford Defendants
8 precisely “the right to do what they did.” *Id.* at 14-15. The Terms state: “If we reasonably believe
9 that any Content is in breach of this Agreement or may cause harm to YouTube, our users, or
10 third parties, we may remove or take down that Content in our discretion.” FAC, Ex. A at 4. But,
11 as the Court recognized, that provision does not exist in isolation. *See* Order at 14. A separate
12 provision makes clear that “***YouTube is under no obligation to host or serve Content.***” *See*
13 FAC, Ex. A at 3 (emphasis added). None of Plaintiff’s cursory amendments (FAC ¶¶ 16-18, 93,
14 95) do anything to overcome the Court’s prior holding or the clear language in the governing
15 agreement. Plaintiff adds a token suggestion that “YouTube never shows that it had a ‘reasonable
16 belief’ that the videos breached the TOS or harmed anyone.” FAC ¶ 95; *see also* FAC ¶ 12;
17 Knoll Decl., Ex. 1. This does not state a claim. Plaintiff again focuses solely on the “reasonable
18 belief” provision, ignoring the separate “no obligation” provision. But even as to the former,
19 Plaintiff disregards what the Terms of Service say. There is no requirement that YouTube wait
20 until a video actually causes real-world harm before removing it. Instead, removal is permitted
21 based simply on the belief that the content “***may*** cause harm,” or that it violates the Terms of
22 Service. The FAC does not suggest that YouTube lacked such a belief. Nor could it. Indeed,
23 Plaintiff’s whole theory is that YouTube acted to protect itself from possible legislative reprisal.
24 *See, e.g.*, FAC ¶¶ 30-31, 33. And in any event, the FAC “contains no plausible factual allegations
25 suggesting that YouTube did not consider the content of the Fauci and George Floyd videos
26 objectionable and/or contrary to its stated policies and guidelines.” Order at 21. In short, as this
27 Court previously concluded, YouTube’s removal of Plaintiff’s videos fell squarely within the
28 rights expressly provided by the Terms of Service. *Id.* at 15.

1 Finally, even putting aside the clear language of the agreement, Plaintiff's effort to
 2 premise its contract claim on YouTube's editorial decision to remove content remains barred by
 3 Section 230(c). *See* 47 U.S.C. § 230(c)(1), (c)(2)(A). As this Court already recognized,
 4 Plaintiff's claims fall squarely within Section 230(c)(2)(A) because there is no allegation that
 5 YouTube did not subjectively consider the content "objectionable," and "conclusory assertions
 6 that YouTube acted in bad faith" do not surmount this immunity. Order at 21; *accord Domen v.*
 7 *Vimeo, Inc.*, 2021 U.S. App. LEXIS 7101, at *3, *12-13 (2d Cir. Mar. 11, 2021). Beyond that,
 8 Section 230(c)(1) provides additional protection against claims based on YouTube's decision to
 9 withdraw third-party content from publication. And as the California Court of Appeal recently
 10 made clear in a similar case, that remains true even where such a claim is based on an alleged
 11 breach of a general terms of service agreement. *Murphy v. Twitter, Inc.*, 60 Cal. App. 5th 12
 12 (2021) (applying Section 230(c)(1) to uphold dismissal of breach of contract claim alleging that
 13 Twitter wrongfully terminated plaintiff's account for posting offensive content).²

14 CONCLUSION

15 For all these reasons, Plaintiff's breach of contract claim fails. Because any further
 16 amendments would be futile, dismissal should be with prejudice.

17 Respectfully submitted,

18 Dated: April 27, 2021

19 WILSON SONSINI GOODRICH & ROSATI
 20 Professional Corporation

21 By: /s/ Lauren Gallo White
 22 Lauren Gallo White

23 Attorneys for Defendants
 24 GOOGLE LLC, YOUTUBE, LLC, and
 25 ALPHABET INC.

26 ² As *Murphy* explained, the Ninth Circuit's decision in *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096
 27 (9th Cir. 2009) "never suggested . . . that *all* contract or promissory estoppel claims survive CDA
 28 immunity." *Murphy*, 60 Cal. App. 5th at 29. *Murphy* made clear that Section 230(c)(1) protects
 an online service against claims that accuse it "of unfairly applying its general rules regarding
 what content it will publish." *Id.* As the court explained, Twitter's "alleged actions in refusing to
 publish and banning Murphy's tweets . . . 'reflect paradigmatic editorial decisions not to publish
 particular content.'" *Id.* The same is true here.