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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHILDREN'S HEALTH DEFENSE,

Plaintiff,

v.

FACEBOOK INC., *et al.*,

Defendants.

Case No. [20-cv-05787-SI](#)

**ORDER GRANTING DEFENDANTS'
MOTIONS TO DISMISS SECOND
AMENDED COMPLAINT, DENYING
PLAINTIFF'S MOTION TO
SUPPLEMENT AND DENYING LEAVE
TO AMEND**

Re: Dkt. Nos. 68, 69, 75, 76, 103

On May 5, 2021, the Court held a hearing on defendants' motions to dismiss the second amended complaint and plaintiff's motion to supplement the complaint. After the hearing, plaintiff filed a request for judicial notice and another motion to further supplement the second amended complaint and for *in camera* inspection under the All Writs Act.

For the reasons set forth below, the Court GRANTS the motions to dismiss without leave to amend, GRANTS the request for judicial notice, DENIES the motions to supplement the second amended complaint as futile and DENIES the motion for an *in camera* inspection.

INTRODUCTION

On August 17, 2020, plaintiff Children's Health Defense ("CHD") filed this lawsuit against defendants Facebook, Inc. ("Facebook"), Facebook CEO Mark Zuckerberg ("Zuckerberg"), The Poynter Institute for Media Studies, Inc. ("Poynter"), and Science Feedback¹ alleging four causes of action: (1) violation of the First and Fifth Amendments pursuant to *Bivens v. Six Unknown Named*

¹ Science Feedback is a French non-profit organization providing fact-checking services for Facebook. *Id.* ¶ 20. It appears from the docket that Science Feedback has not yet been served.

1 *Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971); (2) false advertising in violation of
 2 the Lanham Act, 15 U.S.C. § 1125(a); (3) violation of the Racketeer Influenced and Corrupt
 3 Organizations Act (“RICO”), 18 U.S.C. §§ 1962(c), 1964(c); and (4) declaratory relief.

4 CHD operates a social media page on Facebook’s platform. CHD posts articles and opinion
 5 pieces about the harms of vaccines, including COVID-19 vaccines, as well as the dangers of
 6 pesticides and wireless technologies such as 5G. CHD alleges that the United States government
 7 — through Congressman Adam Schiff, the Centers for Disease Control (“CDC”), and the World
 8 Health Organization (“WHO”), as the CDC’s “proxy” — has “privatized” the First Amendment by
 9 “teaming up” with Facebook to censor CHD’s vaccine safety speech. Second Amended Compl.
 10 (“SAC”) ¶ 1, Dkt. No. 65-1. CHD alleges that defendants have implemented this campaign by
 11 “purporting to flag misinformation” by identifying certain information on CHD’s Facebook page as
 12 “false” or “misleading” when that information is, in fact, “valid and truthful,” and through the
 13 posting of a Facebook advisory comment that is affixed to CHD’s Facebook page which informs
 14 visitors that they can visit CDC.gov to obtain information about vaccines. *Id.* CHD alleges that
 15 Facebook, Zuckerberg, and the fact-checking organizations have engaged in a “smear campaign”
 16 and “multiple acts of fraud and deception in furtherance of their aggressive and heavy-handed
 17 campaign of censorship against Plaintiff’s Facebook page” with the purpose of “stigmatizing CHD
 18 and its content regarding vaccines, and discouraging users from accessing this content.” *Id.* ¶ 4.

19 CHD alleges it has suffered monetary and reputational harm, and CHD seeks damages and
 20 declaratory and injunctive relief, including an order directing Facebook to “remove its warning
 21 labels and misclassification of all content on [CHD’s] Facebook page, and to desist from any further
 22 warnings or classifications” and an order “requiring defendants to make a public retraction of their
 23 false statements.” *Id.* Prayer for Relief.

24 **BACKGROUND**

25 The following facts are drawn from the SAC.² Plaintiff CHD is a not-for-profit “child health
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28 ² Plaintiff has twice amended the complaint in response to motions to dismiss filed by

1 protection and advocacy group” incorporated under the laws of the State of Georgia. *Id.* ¶¶ 14, 25.
 2 CHD is an “advocate for complete candor as to the risks of environmental toxins, vaccines, 5G and
 3 wireless networks, and the conflicts of interest that have compromised government oversight of
 4 those products and services.” *Id.* ¶ 6. CHD operates the website, <https://childrenshealthdefense.org>,
 5 where it publishes research articles and opinion pieces. *Id.* ¶ 15. CHD receives all of its financial
 6 support from contributions, membership fees, and gross receipts from activities related to its tax-
 7 exempt functions. *Id.* Robert F. Kennedy, Jr. founded and leads CHD. *Id.* ¶ 14.

8 Defendant Facebook, Inc. is a Delaware corporation with its principal place of business in
 9 Menlo Park, California. *Id.* ¶ 16. Facebook operates an online social media and social networking
 10 platform on which users like CHD can gather, advocate, and fundraise. *Id.* Facebook users’
 11 utilization of Facebook is governed by Facebook’s Terms of Service that, if violated, may result in
 12 the deletion of users’ Facebook account and pages. *Id.* ¶¶ 36-39. Facebook’s Terms of Service
 13 “permit it to ‘detect misuse of [its] Products, harmful conduct towards others and situations where
 14 [it] may be able to help support or protect [its] community.’ Facebook retains limited rights, e.g.,
 15 ‘offering help, removing content, blocking access to certain features, disabling an account or
 16 contacting law enforcement[.] [and] shar[ing] data with other Facebook companies when [it]
 17 detect[s] misuse or harmful conduct[.]’” *Id.* ¶ 37 (citing Terms ¶¶ 1, 3(2)(3)).

18 Defendant Mark Zuckerberg is a co-founder of Facebook and serves as Facebook’s
 19 chairman, CEO, and controlling shareholder. *Id.* ¶ 17. In December 2015, Zuckerberg and his wife,
 20 Dr. Priscilla Chan, co-founded the Chan Zuckerberg Initiative (“CZI”) to “donate” 99 percent of
 21 their Facebook shares in an effort to “develop new drugs, diagnostic tests and vaccines.” *Id.* ¶ 281.
 22 Plaintiff alleges that both Zuckerberg and Facebook have significant financial interests in the
 23 vaccines programs that CHD warns against. *Id.* ¶¶ 274-91.

24 Defendant The Poynter Institute for Media Studies, Inc. (“Poynter”) is a Florida non-profit
 25 organization. *Id.* ¶ 21. Poynter also operates a branded news fact-checking service, PolitiFact. *Id.*

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if not substance. The original complaint was 95 pages; the first amended complaint was 148 pages;
 the second amended complaint is 151 pages.

1 PolitiFact contracts with social media companies, such as Facebook, to fact-check content shared
 2 on social media platforms. *Id.* The SAC also alleges that International Fact-Checking Network
 3 (“IFCN”), a unit of Poynter, certifies Facebook’s fact-checking “partners,” including Science
 4 Feedback. *Id.* ¶¶ 105-06, 109.

5 On February 14, 2019, Congressman Adam Schiff, identifying himself as “a Member of
 6 Congress who is deeply concerned about declining vaccination rates around the nation,” wrote a
 7 public letter addressed to Zuckerberg. *Id.* ¶ 60. In that letter, Rep. Schiff “urge[] that Facebook
 8 implement specific algorithms to identify, censor and remove all so-called ‘vaccine
 9 misinformation.’” *Id.* Because the SAC repeatedly quotes portions of this letter, the Court has
 10 reproduced the entirety of the letter here:

11 February 14, 2019

12 Mark Zuckerberg
 13 Chairman and Chief Executive Officer
 14 Facebook Inc.
 15 1 Hacker Way
 16 Menlo Park, CA 94025

17 Dear, Mr. Zuckerberg:

18 As more Americans use the Internet and social media platforms as their
 19 primary source of information, it is important that we explore the quality of the
 20 information that they receive, particularly on issues that directly impact the health
 21 and well-being of Americans, as well as the billions who use your site around the
 22 world. Accordingly, I am writing out of my concern that Facebook and Instagram
 23 are surfacing and recommending messages that discourage parents from vaccinating
 24 their children, a direct threat to public health, and reversing progress made in tackling
 25 vaccine-preventable diseases.

26 The scientific and medical communities are in overwhelming consensus that
 27 vaccines are both effective and safe. There is no evidence to suggest that vaccines
 28 cause life-threatening or disabling diseases, and the dissemination of unfounded and
 29 debunked theories about the dangers of vaccinations pose a great risk to public
 30 health. In fact, the World Health Organization listed vaccine hesitancy – the
 31 reluctance or refusal to vaccinate despite the availability of vaccines – as one of the
 32 top threats to global health in 2019. In a dramatic demonstration of the dangers,
 33 Washington state declared a public health emergency due to a measles epidemic in
 34 Clark County, signaling the resurgence of a potentially fatal disease that was
 35 effectively eliminated from the United States decades ago by vaccines.

36 There is strong evidence to suggest that at least part of the source of this trend
 37 is the degree to which medically inaccurate information about vaccines surface on
 38 the websites where many Americans get their information, among them Facebook

1 acknowledged, the algorithms which power these services are not designed to
2 distinguish quality information from misinformation or misleading information, and
3 the consequences of that are particularly troubling for public health issues. I
4 acknowledge that it may not always be a simple matter to determine when
5 information is medically accurate, nor do we ask that your platform engage in the
6 practice of medicine, but if a concerned parent consistently sees information in their
7 Newsfeed that casts doubt on the safety or efficacy of vaccines, it could cause them
8 to disregard the advice of their children's physicians and public health experts and
9 decline to follow the recommended vaccination schedule. Repetition of information,
10 even if false, can often be mistaken for accuracy, and exposure to anti-vaccine
11 content via social media may negatively shape user attitudes towards vaccination.

12 Additionally, even parents and guardians who seek out accurate information
13 about vaccines could unwittingly reach pages and videos with misinformation. A
14 report by the Guardian found that on both Facebook and YouTube, suggested
15 searches related to vaccines often led users to pages or groups providing medically
16 and scientifically inaccurate information. Finally, I am concerned by the report that
17 Facebook accepts paid advertising that contains deliberate misinformation about
18 vaccines.

19 As a Member of Congress who is deeply concerned about declining
20 vaccination rates around the nation, I am requesting additional information on the
21 steps that you currently take to provide medically accurate information on
22 vaccinations to your users, and to encourage you to consider additional steps you can
23 take to address this growing problem. I was pleased to see YouTube's recent
24 announcement that it will no longer recommend videos that violate its community
25 guidelines, such as conspiracy theories or medically inaccurate videos, and
26 encourage further action to be taken related to vaccine misinformation.

27 Specifically, I request that you provide answers on the following questions:

28 •Does content which provides medically inaccurate information about
29 vaccines violate your terms of service?

30 •What action(s) do you currently take to address misinformation related to
31 vaccines on your platforms? Are you considering or taking additional actions?

32 •Do you accept paid advertising from anti-vaccine activists and groups on
33 your platforms? How much has been spent in the past year on advertising on this
34 topic?

35 •What steps do you currently take to prevent anti-vaccine videos or
36 information from being recommended to users, either algorithmically or as a
37 suggested search result?

38 I appreciate your timely response to these questions and encourage you to
39 consider what additional steps you can take to address this growing problem. As
40 more Americans rely on your services as their primary source of information, it is
41 vital that you take that responsibility with the seriousness it requires, and nowhere
42 more so than in matters of public health and children's health. Thank you for your
43 attention to this important topic.

44 Sincerely,

45 Adam B. Schiff/Member of Congress

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