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8 AMBASSADOR MARC GINSBERG and
9 COALITION FOR A SAFER WEB,

10 Plaintiffs,

11 v.

12 GOOGLE INC.,

13 Defendant.

14 Case No. 21-cv-00570-BLF

15 **ORDER GRANTING MOTION TO**
16 **DISMISS FIRST AMENDED**
17 **COMPLAINT WITHOUT LEAVE TO**
18 **AMEND; AND DISMISSING ACTION**
19 **WITH PREJUDICE**

20 [Re: ECF 23]

21 Plaintiffs are former United States Ambassador Marc Ginsberg (“Ambassador Ginsberg”)
22 and an organization he created, Coalition for a Safer Web (“CSW”). CSW’s mission is to prevent
23 terrorist and extremist groups from using social media platforms to further their agendas.
24 Plaintiffs assert that such groups routinely use Telegram, an instant messaging app, to disseminate
25 racist speech and incite violence against Jewish people and people of color. Plaintiffs seek to
26 impose liability against Defendant Google Inc. (“Google”) based on the availability of Telegram
27 in Google’s online Play Store. The operative first amended complaint (“FAC”)¹ asserts claims
28 against Google for negligent infliction of emotional distress and violations of California’s Unfair
Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200 *et seq.*

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¹ Plaintiffs filed two FACs, one on June 8, 2021 (ECF 17) and the other on June 11, 2021
31 (ECF 19). The Court’s references to the “FAC” herein are to the later-filed pleading (ECF 19), as
32 the docket entry for that pleading indicates that it is a corrected version. Unfortunately, exhibits
33 were omitted from the later-filed FAC (ECF 19). For the sake of efficiency, the Court has
34 considered the exhibits attached to the earlier version of the FAC (ECF 17) rather than requiring
35 Plaintiffs to refile the exhibits.

1 Google moves to dismiss the FAC under Federal Rule of Civil Procedure 12(b)(6) for
2 failure to state a claim upon which relief may be granted. The Court has considered the parties'
3 briefing, the oral arguments presented by counsel at the hearing on January 13, 2022, and the
4 supplemental list of cases filed by Plaintiffs on January 21, 2022 with leave of the Court.

5 The motion to dismiss is GRANTED WITHOUT LEAVE TO AMEND and the action is
6 DISMISSED WITH PREJUDICE.

7 **I. BACKGROUND²**

8 Ambassador Ginsberg has had a notable career in public service and in the public eye. He
9 has served as a White House liaison for the Secretary of State, a Deputy Senior Advisor to the
10 President for Middle East Policy, and a United States Ambassador to Morocco. FAC ¶ 5. He was
11 the first Jewish United States Ambassador to an Arab country. *Id.* ¶ 7. Ambassador Ginsberg has
12 addressed Jewish groups in the United States and throughout the Arab world on the importance of
13 Judaism and Israel, and he is involved with a number of synagogues in Maryland, where he
14 resides. *Id.* ¶ 6. He has been subjected to two assassination attempts due to his religious beliefs.
15 *Id.* ¶ 7.

16 “Ambassador Ginsberg created the Coalition for a Safer Web to compel social media
17 platforms to end their tolerance of anti-Semitism and their enabling of extremist groups to operate
18 with impunity over social media.” FAC ¶ 8. CSW employs Ambassador Ginsberg and reimburses
19 him for business use of his Android smartphone, a Samsung Galaxy Express. *Id.* ¶¶ 9, 13.
20 Ambassador Ginsberg purchases Google products in part because of the apps available through the
21 Google Play Store. *Id.* ¶ 25.

22 Google requires that app developers comply with certain guidelines if they wish their apps
23 to be available in the Play Store. *Id.* ¶ 27. Those guidelines include Google’s “Developer
24 Program Policy” and written policies regarding “User Generated Content.” FAC Exhs. A, C, ECF
25 17. Google publishes guidelines for developers online. FAC ¶ 27. Google’s Developer Program
26 Policy advises app developers that Google does not allow: “apps that promote violence, or incite

28 ² Plaintiffs’ factual allegations are accepted as true for purposes of the Rule 12(b)(6) motion. See

1 hatred against individuals or groups based on race or ethnic origin, religion . . . ”; “[a]pps that
2 depict or facilitate gratuitous violence or other dangerous activities”; or “apps with content related
3 to terrorism, such as content that promotes terrorist acts, incites violence, or celebrates terrorist
4 attacks.” FAC Exh. A. Google’s guidelines regarding User Generated Content (“UGC”) requires
5 that app developers define objectionable content in a way that complies with Google’s Developer
6 Program Policy, and prohibit such content in the app’s terms of use or user policies. FAC Exh. C.
7 Google advises that: “[a]pps whose primary purpose is featuring objectionable UGC will be
8 removed from Google Play,” and “apps that end up being used primarily for hosting objectionable
9 UGC, or that develop a reputation among users of being a place where such content thrives, will
10 also be removed from Google Play.” *Id.*

11 Plaintiffs allege that Google allows the Telegram app to be distributed through the Play
12 Store even though the app does not comply with Google’s developer guidelines and routinely is
13 used to transmit hate speech that violates California law. FAC ¶ 28. Telegram is a cloud-based
14 mobile and desktop messaging app that allows users to create private groups of up to 200,000
15 members, and to create public channels to broadcast to unlimited audiences. *Id.* ¶¶ 33-34.
16 Telegram has been downloaded from the Google Play Store an estimated 500 million times
17 worldwide. *Id.* ¶ 32. According to Plaintiffs, Telegram “is currently the most utilized messaging
18 app among extremists who are promoting violence in the United States,” and “currently serves as
19 the preferred Neo-Nazi/white nationalist communications channel, fanning anti-Semitic and anti-
20 black incitement during the current wave of protests across America.” *Id.* ¶¶ 48, 52.

21 Plaintiffs claim that Google is liable for failing to enforce its own developer guidelines and
22 policies. According to Plaintiffs, “Google owes a duty of reasonable care to ensure that their
23 services are not used as a means to inflict religious and racial intimidation,” and Google breached
24 that duty “by continuing to host Telegram on the Google Play Store despite Defendant’s
25 knowledge that Telegram was being used to incite violence, including violence against African
26 Americans and Jews.” FAC ¶¶ 73, 80. Ambassador Ginsberg claims that the use of Telegram to
27 promote violence against Jews generally has caused him to “live in apprehension of religiously

1 Plaintiffs filed the complaint in this action on January 25, 2021 and amended their
2 complaint as of right in response to Google's prior motion to dismiss. *See* Compl., ECF 1; FAC,
3 ECF 19. The operative FAC asserts three claims: (1) negligent infliction of emotional distress
4 ("NIED"); (2) violation of the unfair prong of California's UCL; and (3) violation of the unlawful
5 prong of California's UCL. Google now brings a second motion to dismiss, directed to the FAC.

6 **II. LEGAL STANDARD**

7 "Under Rule 12(b)(6), a complaint should be dismissed if it fails to include 'enough facts
8 to state a claim to relief that is plausible on its face.'" *Hyde v. City of Willcox*, 23 F.4th 863, 869
9 (9th Cir. 2022) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A complaint's
10 claims are plausible when the pleaded facts 'allow[] the court to draw the reasonable inference
11 that the defendant is liable for the misconduct alleged.'" *Hyde*, 23 F.4th at 869 (quoting *Ashcroft*
12 *v. Iqbal*, 556 U.S. 662, 678 (2009)).

13 **III. DISCUSSION**

14 Google seeks dismissal of all claims asserted by Plaintiffs. First, Google argues that it is
15 immune from suit under Section 230 of the Communications Decency Act of 1996 ("CDA"), 47
16 U.S.C. § 230. Second, Google asserts that Plaintiffs lack standing to sue under the UCL. Third,
17 Google argues that Plaintiffs have failed to allege essential elements of their NIED claim,
18 specifically, duty and proximate cause. In opposition, Plaintiffs argue that Section 230 immunity
19 does not apply, they have standing to sue under the UCL, and their NIED claim is adequately pled.

20 For the reasons discussed below, the Court concludes that Plaintiffs' claims are barred by
21 Section 230 of the CDA, Plaintiffs have not alleged facts establishing standing to sue under the
22 UCL, and Plaintiffs have not stated a claim for NIED.

23 **A. Section 230**

24 Section 230 of the CDA "protects certain internet-based actors from certain kinds of
25 lawsuits." *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1099 (9th Cir. 2009). Under the statute, "[n]o
26 provider or user of an interactive computer service shall be treated as the publisher or speaker of
27 any information provided by another information content provider." 47 U.S.C. § 230(c)(1). "No

1 is inconsistent with this section.” 47 U.S.C. § 203(e)(3).

2 In *Barnes*, the Ninth Circuit created a three-prong test for Section 230 immunity. *See*
3 *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1097 (9th Cir. 2019) (discussing *Barnes*
4 test). “Immunity from liability exists for ‘(1) a provider or user of an interactive computer service
5 (2) whom a plaintiff seeks to treat, under a state law cause of action, as a publisher or speaker (3)
6 of information provided by another information content provider.’” *Id.* (quoting *Barnes*, 570 F.3d
7 at 1100-01). “When a plaintiff cannot allege enough facts to overcome Section 230 immunity, a
8 plaintiff’s claims should be dismissed.” *Id.*

9 **1. Interactive Computer Service Provider**

10 Under the first prong of the *Barnes* test, the Court must determine whether Plaintiffs’
11 allegations establish that Google is an interactive computer service provider. “Websites are the
12 most common interactive computer services.” *Dyroff*, 934 F.3d at 1097; *see also Fair Hous.*
13 *Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1162 n.6 (9th Cir. 2008)
14 (“Today, the most common interactive computer services are websites.”). Plaintiffs do not dispute
15 that Google is an interactive computer service provider.

16 The Court finds that the first prong of the *Barnes* test is satisfied.

17 **2. Seek to Treat as a Publisher or Speaker**

18 Under the second prong of the test, the Court must determine whether Plaintiffs’
19 allegations show that Plaintiffs seek to treat Google as a publisher or speaker with respect to
20 content on the Google Play Store. Google argues that Plaintiffs seek to treat it as a publisher,
21 while Plaintiffs argue that they do not.

22 “In this particular context, publication generally involve[s] reviewing, editing, and
23 deciding whether to publish or to withdraw from publication third-party content.” *Lemmon v.*
24 *Snap, Inc.*, 995 F.3d 1085, 1091 (9th Cir. 2021) (internal quotation marks and citation omitted).
25 “A defamation claim is perhaps the most obvious example of a claim that seeks to treat a website
26 or smartphone application provider as a publisher or speaker, but it is by no means the only type of
27 claim that does so.” *Id.* “[W]hat matters is whether the cause of action inherently requires the

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