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21 **UNITED STATES DISTRICT COURT**
22 **NORTHERN DISTRICT OF CALIFORNIA**
23 **SAN FRANCISCO DIVISION**

24 LAURA LOOMER, as an individual, LAURA
25 LOOMER, in her capacity as a Candidate for
26 United States Congress, and LAURA LOOMER
27 FOR CONGRESS, INC.,

28 Plaintiffs,

v.

META PLATFORMS, INC., MARK
ZUCKERBERG, in his capacity as CEO of Meta
Platforms, Inc. and as an individual, TWITTER,
INC., and JACK DORSEY, in his capacity as
former CEO of Twitter, Inc. and as an individual,

Defendants.

Case No. 3:22-cv-02646-LB

**META PLATFORMS, INC. AND
MARK ZUCKERBERG'S NOTICE OF
MOTION AND MOTION TO DISMISS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Hon. Laurel Beeler
Courtroom B, 15th Floor
Date: September 15, 2022
Time: 9:30 a.m.

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26 *In re JUUL Labs, Inc., Marketing, Sales Practices, & Products Liability*
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18 *Manchada v. Google,*
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21 *Miami Herald Publishing Co. v. Tornillo,*
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28

1 *Neibel v. Trans World Assurance Co.*,
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6 *O’Handley v. Padilla*,
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8 *Odom v. Microsoft Corp.*,
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 10 *Oscar v. University Students Co-operative Ass’n*,
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 22 *Royce Int’l Broadcasting Corp. v. Field*,
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23
 24 *Sanchez-Torres v. State*,
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25 *Savage v. Council on American-Islamic Relations, Inc.*,
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28

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7 *Sikhs for Justice “SFJ,” Inc. v. Facebook, Inc.*,
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10 *Smith v. Levine Leichtman Capital Partners, Inc.*,
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11 *Sun Savings & Loan Ass’n v. Dierdorff*,
12 825 F.2d 187 (9th Cir. 1987)13

13 *Southwest Marine, Inc. v. Triple A Machine Shop, Inc.*,
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14 *Swartz v. KPMG LLP*,
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16 *Taylor v. Sturgell*,
17 553 U.S. 880, 895 (2008).....8

18 *Threshold Enterprises Ltd. v. Pressed Juicery, Inc.*,
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19 *Titan Global LLC v. Organo Gold Int’l, Inc.*,
20 2012 WL 6019285 (N.D. Cal. Dec. 2, 2012).....16

21 *Turner v. Cook*,
22 362 F.3d 1219 (9th Cir. 2004)12

23 *United States v. Al Kassar*,
660 F.3d 108 (2d Cir. 2011).....20

24 *United States v. Christensen*,
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26 *United States v. Green*,
27 592 F.3d 1057 (9th Cir. 2010)16

28 *United States v. Kozoil*,
993 F.3d 1160 (9th Cir. 2021)19

1 *United States v. Lew*,
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2 *United States v. McFall*,
3 558 F.3d 951 (9th Cir. 2009)19, 20

4 *United States v. Miller*,
5 953 F.3d 1095 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 1085 (2021).....17

6 *United States v. Turkette*,
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7 *Vertkin v. Wells Fargo Home Mortgage*,
8 2011 WL 175518 (N.D. Cal. Jan. 18, 2011).....10, 11

9 *Westchester County Independent Party v. Astorino*,
10 137 F. Supp. 3d 586 (S.D.N.Y. 2015).....15

11 *Whittlestone, Inc. v. Handi-Craft Co.*,
618 F.3d 970 (9th Cir. 2010)9

12 *Yates v. United States*,
13 354 U.S. 298 (1957), *overruled on other grounds*, *Burks v. United States*, 437
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15 *Zimmerman v. Facebook, Inc.*,
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16 **DOCKETED CASES**

17 *Freedom Watch, Inc. et al. v. Google, Inc. et al.*, No. 1:18-cv-02030-TNM (D.D.C.)6

18 *Loomer v. Facebook, Inc.*, No. 50-2020-CA-002352-XXXX-MB (Fla. 15th Cir. Ct.).....6

19 *Loomer v. Facebook, Inc.*, No. 4:20-cv-03154-HSG (N.D. Cal.).....7

20 *Loomer v. Facebook, Inc.*, No. 9:20-cv-80484-DMM (S.D. Fla.).....6

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28 § 2385.....22

Fed R. Civ. P. 9(b)15, 16

1 Fed R. Civ. P. 12(b)(6).....1

2 **OTHER AUTHORITIES**

3 Birnbaum, *Twitter Takes Down Hamas, Hezbollah-Affiliated Accounts After*
Lawmaker Pressure, The Hill (Nov. 4, 2019),
 4 [https://thehill.com/policy/technology/468866-twitter-takes-down-hamas-](https://thehill.com/policy/technology/468866-twitter-takes-down-hamas-hezbollah-affiliated-accounts-after-lawmaker)
hezbollah-affiliated-accounts-after-lawmaker21

6 Bokhari, *Politicians Won’t Be Allowed on Facebook If They’ve Previously Been Banned*,
 Breitbart (Nov. 14, 2019), [https://www.breitbart.com/tech/2019/11/14/politicians-](https://www.breitbart.com/tech/2019/11/14/politicians-wont-be-allowed-on-facebook-if-theyve-previously-been-banned)
 7 *wont-be-allowed-on-facebook-if-theyve-previously-been-banned*4, 5

8 Boyle, *Facebook’s Updated Advertising Policy Could Enable Politicians To Spread*
Misinformation, Newsweek (Oct. 3, 2019), [https://www.newsweek.com/trump-](https://www.newsweek.com/trump-biden-facebook-misleading-ads-1463054)
 9 *biden-facebook-misleading-ads-1463054*16

10 Facebook, *Terms of Service*, <https://www.facebook.com/legal/terms>3, 4, 5

11 Frenkel & Hubbard, *After Social Media Bans, Militant Groups Found Ways to Remain*, N.Y.
 Times (Apr. 19, 2019), [https://www.nytimes.com/2019/04/19/technology/terrorist-](https://www.nytimes.com/2019/04/19/technology/terrorist-groups-social-media.html)
 12 *groups-social-media.html*.....21

13 Hern, *Facebook Exempts Political Ads From Ban On Making False Claims*, Guardian
 14 (Oct. 4, 2019), [https://www.theguardian.com/technology/2019/oct/04/facebook-](https://www.theguardian.com/technology/2019/oct/04/facebook-exempts-political-ads-ban-making-false-claims)
 15 *exempts-political-ads-ban-making-false-claims*16

16 Lee, *Facebook bans ‘dangerous individuals,’* BBC News (May 3, 2019),
<https://www.bbc.com/news/technology-48142098>.....4

17 Manjarres, *Laura Loomer Announces 2022 Congressional Run*, The Floridian
 18 (Feb. 24, 2021), [https://floridianpress.com/2021/02/laura-loomer-](https://floridianpress.com/2021/02/laura-loomer-announces-2022-congressional-run)
 19 *announces-2022-congressional-run*14, 15

20 Martin, *Zuckerberg Tells Fox News Facebook Won’t Censor Politicians, While Warren*
Says Facebook Could Help Trump Win Again, Newsweek (Oct. 17, 2019),
 21 [https://www.newsweek.com/zuckerberg-tells-fox-news-facebook-wont-censor-](https://www.newsweek.com/zuckerberg-tells-fox-news-facebook-wont-censor-politicians-while-warren-says-facebook-could-help-1466117)
politicians-while-warren-says-facebook-could-help-1466117).....17

22 Meta Transparency Center, *Dangerous Individuals and Organizations*,
 23 [https://transparency.fb.com/policies/community-standards/dangerous-individuals-](https://transparency.fb.com/policies/community-standards/dangerous-individuals-organizations)
 24 *organizations*3, 4

25 Meta Transparency Center, *Facebook Community Standards*, [https://](https://transparency.fb.com/policies/community-standards)
transparency.fb.com/policies/community-standards.....3

26 Meta Transparency Center, *Hate Speech*, [https://transparency.fb.com/policies/](https://transparency.fb.com/policies/community-standards/hate-speech) *community-*
 27 *standards/hate-speech*3

1
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10
11
12
13
14
15
16
17
18
19
20
21
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23
24
25
26
27
28

Ortutay, *Facebook bans ‘dangerous individuals’ cited for hate speech*, Associated Press (May 3, 2019), <https://apnews.com/article/alex-jones-north-america-ap-top-news-sc-state-wire-ca-state-wire-7825d0df3fda4799a78da92b9e969cdc>4, 5

1 **NOTICE OF MOTION AND MOTION TO DISMISS**

2 PLEASE TAKE NOTICE THAT, on September 15, 2022 at 9:30 am or as soon thereafter
3 as the matter may be heard, in Courtroom B of the U.S. District Court for the Northern District of
4 California, San Francisco Division, this Motion to Dismiss will be heard. Meta Platforms, Inc. and
5 Mark Zuckerberg move to dismiss the Complaint pursuant to Federal Rule of Civil Procedure
6 12(b)(6). This Motion to Dismiss is based on this Notice of Motion, the Memorandum of Points
7 and Authorities, and the supporting Declaration of Emily Barnet.

8 **STATEMENT OF REQUESTED RELIEF**

9 Meta and Mark Zuckerberg request that the Court dismiss the Complaint with prejudice.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 Meta suspended and then banned Laura Loomer from the Facebook platform for violating
12 its policies against hate speech and dangerous individuals and organizations. This is Loomer’s
13 fourth lawsuit challenging those decisions, having previously failed at the pleadings stage on
14 antitrust and First Amendment claims and having abandoned her defamation claims. Her latest
15 theory is that Meta and its CEO Mr. Zuckerberg (collectively “Meta”) allegedly removed her
16 account as part of a racketeering enterprise with defendants Twitter and its former CEO Jack
17 Dorsey (collectively “Twitter”), as well as others, that used “the pretext of ‘hate speech’ as a cover
18 for committing” “illegal predicate acts,” including “advocating the overthrow of the government.”
19 Compl. ¶ 30. She seeks billions in damages and asks the Court to order Meta to stop removing
20 content that violates its policies against hate speech and dangerous individuals and organizations.

21 Over the course of 132 pages and 369 allegations, Loomer’s Complaint contains hardly
22 any allegations that even arguably relate to her baseless claims. Scores of her allegations complain
23 of conduct by non-defendants and actions that she does not even attempt to link to her alleged
24 injuries. Despite its prodigious length, the Complaint describes no actionable conduct by Meta at
25 all, let alone a viable RICO claim. Her claims fail for several, independent reasons.

26 *First*, Loomer’s claims are barred by the doctrine of res judicata. She previously stipulated
27 to a with-prejudice dismissal of a suit raising claims based on the removal of her Facebook account.
28 She cannot recycle those same claims here under the guise of a RICO suit.

1 *Second*, Loomer’s RICO claims suffer from numerous independent and incurable defects.
2 At the outset, RICO must be narrowly construed here because the challenged conduct—Meta’s
3 exercise of editorial control and judgment over the content it displays on its privately owned
4 website—is protected by the First Amendment. Moreover, Loomer has failed to plausibly allege
5 the essential elements of an enterprise, a pattern of racketeering activity, or a cognizable RICO
6 injury. And most fundamentally, Loomer fails to plausibly allege a single RICO predicate act. That
7 is all unsurprising given that RICO is concerned with organized, long-term criminal activity, not
8 garden-variety claims like this challenge to Meta’s decision to ban Loomer from Facebook.

9 *Third*, because Loomer fails to state a substantive RICO claim, her RICO conspiracy claim
10 fails as well. Her conspiracy claim also fails for the independent reason that she does not plausibly
11 allege an unlawful agreement among Defendants.

12 *Fourth*, Loomer’s claims are independently barred by Section 230 of the Communications
13 Decency Act, which protects Meta and its CEO Mr. Zuckerberg, as providers of a website, from
14 liability for removing content or disabling accounts on Facebook.

15 Counsel for Meta and Mr. Zuckerberg informed Loomer in a July 8, 2022 letter that her
16 Complaint states no viable legal claim because of these defects and asked her to dismiss her claims
17 or, if she believed any amendment would cure the defects, to amend her complaint before Meta
18 and the Court expended resources on this motion. *Barnet Decl. Ex. 1*.¹ Loomer declined to dismiss
19 the suit or add any new allegations that might address the numerous shortcomings Meta identified.
20 This is not surprising. Loomer has already filed four complaints in three prior lawsuits that
21 unsuccessfully challenged the same conduct. Her fifth effort fails because her claims are
22 fundamentally nonviable. Loomer has offered no indication that, given a sixth chance to try to
23 state a claim against Meta for removing her access to Facebook, she would be able to plausibly
24 allege conduct that violates the law. And no additional allegations could alter the defenses afforded
25 to Meta by Section 230. Accordingly, this Court should dismiss the Complaint with prejudice.

26
27
28 ¹ Two of Loomer’s three counsel, Bob Barr and Brannon Borroughs, moved to withdraw as counsel
the next business day. Notice and Motion to Withdraw *Pro Hac Vice*, ECF No. 39 (July 11, 2022).

BACKGROUND

A. Meta’s Facebook And Content-Moderation Policies

The Complaint alleges that Facebook is a social media website used by over 3 billion people worldwide. Compl. ¶¶ 25, 254. Facebook users share content on the service and interact with content posted by other users. *Id.* Users can maintain Facebook profiles or create Pages; share status updates, photos, videos, and stories; and browse for content through their News Feed. Facebook, *Terms of Service*, <https://www.facebook.com/legal/terms> (Barnet Decl. Ex. 2).² The content that users create is diverse and substantial. *See, e.g.*, Compl. ¶¶ 67, 70, 146, 306.

Meta has developed rules and standards to moderate the user-created content on its service. *See, e.g.*, Compl. ¶¶ 64-67, 99, 165. Though “Meta recognizes how important it is for Facebook to be a place where people feel empowered to communicate,” Meta “take[s] [its] role seriously in keeping abuse off the service.” Meta Transparency Center, *Facebook Community Standards*, <https://transparency.fb.com/policies/community-standards> (Barnet Decl. Ex. 3).³ Meta has therefore developed the Facebook Community Standards, which “outline what is and isn’t allowed on Facebook.” *Id.* As relevant here, Meta does not “allow hate speech on Facebook,” because hate speech “creates an environment of intimidation and exclusion, and in some cases may promote offline violence.” Meta Transparency Center, *Hate Speech*, <https://transparency.fb.com/policies/community-standards/hate-speech> (Barnet Decl. Ex. 4). “In an effort to prevent and disrupt real-world harm,” Meta similarly “do[es] not allow organizations or individuals that proclaim a violent

² The Court may take judicial notice of the existence and content of Facebook’s Terms of Service. *See In re Zoom Video Commc’ns, Inc. Privacy Litig.*, 525 F. Supp. 3d 1017, 1026 n.2 (N.D. Cal. 2021) (“Public terms of service and privacy policies are proper subjects of judicial notice.”); *Caraccioli v. Facebook, Inc.*, 167 F. Supp. 3d 1056, 1063 (N.D. Cal. 2016) (taking judicial notice of Facebook’s Terms of Service); *see also Force v. Facebook, Inc.*, 934 F.3d 53, 59 n.5 (2d Cir. 2019) (Facebook’s Terms of Service and Community Standards were “subject to judicial notice”).

³ The Complaint incorporates the Facebook Community Standards by reference, *see, e.g.*, Compl. ¶¶ 99-114 (hate speech policy), 152-160 (dangerous individuals and organizations policy). They therefore may be considered in deciding this motion to dismiss. *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005) (considering website under “‘incorporation by reference’ doctrine” where contents were “alleged in [the] complaint” but “not physically attached to the [plaintiff’s] pleading”). They may alternatively be judicially noticed by the Court. *See Threshold Enters. Ltd. v. Pressed Juicery, Inc.*, 445 F. Supp. 3d 139, 146 (N.D. Cal. 2020) (“In general, websites and their contents may be judicially noticed.”); *Force*, 934 F.3d at 59 n.5.

1 mission or are engaged in violence to have a presence” on Facebook. Meta Transparency Center,
 2 *Dangerous Individuals and Organizations*, [https://transparency.fb.com/policies/community-](https://transparency.fb.com/policies/community-standards/dangerous-individuals-organizations)
 3 [standards/dangerous-individuals-organizations](https://transparency.fb.com/policies/community-standards/dangerous-individuals-organizations) (Barnet Decl. Ex. 5). Meta thus “remove[s] content
 4 that praises, substantively supports or represents ideologies that promote hate.” *Id.*

5 Facebook users agree to abide by the Community Standards through the platform’s Terms
 6 of Service; consequences for violating the Community Standards “rang[e] from a warning to an
 7 outright ban depending on the severity of the violation and the person’s history on the platform.”
 8 Compl. ¶ 99. The Terms inform Facebook users that if Meta learns of “harmful conduct towards
 9 others,” it “may take appropriate action ... includ[ing] ... removing content, ... [or] disabling an
 10 account.” *Terms of Service* (Barnet Decl. Ex. 2). The Terms also explain that “[i]f we determine
 11 ... that you have clearly, seriously or repeatedly breached our Terms or Policies, including in
 12 particular the Community Standards, ... we may permanently disable or delete your account.” *Id.*

13 Meta vigorously enforces its content-moderation policies. It has removed tens of millions
 14 of pieces of content for violation of its hate speech policy alone. Compl. ¶¶ 146-51.

15 **B. Removal Of Loomer’s Facebook Accounts For Violating Meta’s Policies**

16 Loomer alleges Meta temporarily suspended her Facebook account, and then permanently
 17 removed it, under its dangerous individuals and organizations policy. Compl. ¶¶ 153, 210-211.
 18 According to Loomer, Meta permanently banned her from Facebook because she appeared with
 19 Proud Boys leader Gavin McInnes and praised Faith Goldy, “both of whom were previously
 20 designated ‘hate figures’” by Facebook. *Id.* ¶ 211. At the time Loomer’s account was banned, Meta
 21 explained that it has “always banned individuals or organisations that promote or engage in
 22 violence and hate, regardless of ideology.” Lee, *Facebook bans ‘dangerous individuals,’* BBC
 23 News (May 3, 2019) (Barnet Decl. Ex. 6) (cited at Compl. ¶ 153 n.133).⁴ And “when [Meta] bans

24 ⁴ This news article and the others cited in this Section all are incorporated by reference in the
 25 Complaint and therefore may be considered in deciding this motion to dismiss. *Knieval*, 393 F.3d
 26 at 1076-1077; see Lee, *Facebook bans ‘dangerous individuals,’* BBC News (May 3, 2019),
 27 <https://www.bbc.com/news/technology-48142098> (Barnet Decl. Ex. 6) (cited at Compl. ¶ 153
 28 n.133); Ortutay, *Facebook bans ‘dangerous individuals’ cited for hate speech*, Associated Press
 (May 3, 2019), [https://apnews.com/article/alex-jones-north-america-ap-top-news-sc-state-wire-](https://apnews.com/article/alex-jones-north-america-ap-top-news-sc-state-wire-ca-state-wire-7825d0df3fda4799a78da92b9e969cdc)
[ca-state-wire-7825d0df3fda4799a78da92b9e969cdc](https://apnews.com/article/alex-jones-north-america-ap-top-news-sc-state-wire-ca-state-wire-7825d0df3fda4799a78da92b9e969cdc) (Barnet Decl. Ex. 7) (cited at Compl. ¶ 211
 n.189); Bokhari, *Politicians Won’t Be Allowed on Facebook If They’ve Previously Been Banned*,

1 someone under this policy, the company also prohibits anyone else from praising or supporting
2 them.” Ortutay, *Facebook bans ‘dangerous individuals’ cited for hate speech*, Associated Press
3 (May 3, 2019) (Barnet Decl. Ex. 7) (cited at Compl. ¶ 211 n.189).

4 Months after Meta permanently banned her from Facebook, Loomer announced she was
5 running for Congress in Florida. Compl. ¶ 212. She then attempted to set up “Laura Loomer for
6 Congress,” the “official campaign page for Candidate Loomer,” on Facebook. *Id.* ¶ 218. Meta
7 removed this Page the next day. *Id.* ¶ 219-220. Meta allegedly also prohibited Loomer from
8 purchasing campaign ads. *Id.* ¶¶ 234-235. These decisions were consistent with Facebook’s Terms,
9 which state that “you cannot use Facebook if ... [w]e’ve previously disabled your account for
10 violations of our Terms or Policies.” *Terms of Service* (Barnet Decl. Ex. 2). A spokesperson for
11 Facebook explained that “[p]eople who have been banned from our services aren’t able to set up
12 a new account even if they’re running for office.” Bokhari, *Politicians Won’t Be Allowed on*
13 *Facebook If They’ve Previously Been Banned*, Breitbart (Nov. 14, 2019) (Barnet Decl. Ex. 8) (cited
14 at Compl. ¶ 223 n.195).

15 C. Moderation Of Hate Speech By Other Social Media Websites

16 Loomer alleges that other social media websites have also developed and enforced policies
17 against hate speech. *See* Compl. ¶ 79 (describing Google’s policy against “derogatory content that
18 promotes hatred”); *id.* ¶ 204 (describing Twitter’s hate speech policy); *see also id.* ¶¶ 161-198
19 (describing enforcement of policies). For example, the Complaint alleges that Twitter permanently
20 banned Loomer for “hateful” conduct on November 21, 2018. Compl. ¶ 210. Others were
21 “banned” from or “censored” on websites like Twitter and Google under policies concerning
22 violent rhetoric, *e.g.*, *id.* ¶¶ 164, 185-186, or race-related content, *e.g.*, *id.* ¶¶ 163, 188. Loomer
23 devotes exactly one sentence of her Complaint to explaining how these allegations are relevant to
24 her RICO claims against Meta. She alleges that “Facebook, Twitter, and other social media
25 companies, including but not limited to Instagram, Google Inc. and YouTube are members of an
26 enterprise which has used and continues to use the pretext of ‘hate speech’ as cover for committing

27
28 Breitbart (Nov. 14, 2019) (Barnet Decl. Ex. 8) (cited at Compl. ¶ 223 n.195).

1 and continuing to commit illegal predicate acts under the RICO statutes.” *Id.* ¶ 30.

2 **D. Loomer’s Series of Meritless Lawsuits Based On The Same Events**

3 Loomer has responded to these events by bringing a string of baseless lawsuits against
4 Meta, all arising out of the decision to suspend her Facebook account. She first alleged that
5 Facebook and other online platforms violated the antitrust laws and the First Amendment when
6 they suspended her social media accounts. Am. Compl. ¶¶ 69, 103-128, *Freedom Watch, Inc. et*
7 *al. v. Google, Inc. et al.*, No. 1:18-cv-02030-TNM (D.D.C. Dec. 6, 2018), ECF No. 27.⁵ That case
8 was dismissed for failure to state a claim. *Freedom Watch, Inc. v. Google, Inc.*, 368 F. Supp. 3d
9 30, 34 (D.D.C. Mar. 14, 2019), *aff’d*, 816 F. App’x 497, 500-501 (D.C. Cir. 2020).

10 Just four months after the D.C. district court dismissed that case, Loomer restyled her
11 lawsuit as a defamation claim. She filed suit in the Southern District of Florida, alleging that
12 Facebook defamed her when it temporarily suspended her account and then permanently banned
13 her from the platform under its dangerous individuals and organizations policy. Compl. ¶¶ 5, 23-
14 43, *Loomer v. Facebook, Inc.*, No. 9:19-cv-80893-RS (S.D. Fla. July 8, 2019), ECF No. 1. She
15 took the opportunity to amend her allegations a month later. Am. Compl., *Loomer v. Facebook,*
16 *Inc.*, No. 9:19-cv-80893-RS (S.D. Fla. Aug. 5, 2019), ECF No. 7. And just hours after that court
17 denied Loomer’s motion for an extension of discovery, Loomer filed a nearly identical complaint
18 against Facebook in Florida state court. *See Loomer v. Facebook, Inc.*, No. 50-2020-CA-002352-
19 XXXX-MB (Fla. 15th Cir. Ct. 2020). Facebook removed the state court case to federal court, *see*
20 *Notice of Removal, Loomer v. Facebook, Inc.*, No. 9:20-cv-80484-DMM (S.D. Fla. Mar. 24,
21 2020), ECF No. 1, and Loomer voluntarily dismissed the case shortly thereafter, *Notice of*
22 *Voluntary Dismissal, Loomer*, No. 9:20-cv-80484-DMM (S.D. Fla. Apr. 22, 2020), ECF No. 20.
23 The Southern District of Florida transferred the first-filed Florida case to this District. *Order*
24 *Granting Motion to Transfer, Loomer*, No. 9:19-cv-80893-RS (S.D. Fla. Apr. 13, 2020), ECF No.
25 56. Loomer then voluntarily dismissed that action with prejudice—after Meta had fully briefed a
26 motion to dismiss and filed a motion for summary judgment—asserting that she did not believe

27 _____
28 ⁵ The Court may take judicial notice of these previous court filings, which are “matters of public record.” *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006).

1 that she “would be accorded due process and an unbiased adjudication by the Court.” Notice of
 2 Voluntary Dismissal, *Loomer*, No. 4:20-cv-03154-HSG (N.D. Cal. Aug. 13, 2020), ECF No. 88;
 3 Joint Initial Case Management Statement at 3 (N.D. Cal. June 30, 2020), ECF No. 80. Yet Loomer
 4 now returns to the Northern District of California, almost two years later, with another farfetched
 5 theory of why the decision to remove her Facebook account should be deemed unlawful.

6 ARGUMENT

7 **I. LOOMER’S CLAIMS ARE BARRED BY RES JUDICATA**

8 Loomer’s attempt to repackage claims against Meta that she already raised and voluntarily
 9 dismissed with prejudice is prohibited by res judicata. *See* Compl., *Loomer v. Facebook, Inc.*, No.
 10 9:19-cv-80893-RS (S.D. Fla. July 8, 2019), ECF No. 1; Notice of Voluntary Dismissal, *Loomer*,
 11 No. 4:20-cv-03154-HSG (N.D. Cal. Aug. 13, 2020), ECF No. 88. Loomer’s “stipulated dismissal
 12 of [her] action with prejudice ... constitutes a final judgment on the merits and precludes [her]
 13 from reasserting the same claims in a subsequent action in the same court.” *Headwaters Inc. v.*
 14 *U.S. Forest Serv.*, 399 F.3d 1047, 1052 (9th Cir. 2005). And Loomer undoubtedly pursues the
 15 “same claims” here as she did in her defamation action because “the two suits arise out of the same
 16 transactional nucleus of facts”: Meta’s removal of her Facebook account. *Id.* (citing *Costantini v.*
 17 *Trans World Airlines*, 681 F.2d 1199, 1201–02 (9th Cir. 1982)).

18 It makes no difference that she now labels her challenge as RICO claims; she cannot
 19 relitigate the same claims even if she “has pleaded a new legal theory.” *Costantini*, 681 F.2d at
 20 1201. Nor does it matter that she now challenges Meta’s alleged removal of her campaign page on
 21 November 12, 2019 or its alleged prohibition on her purchase of campaign ads on July 4, 2020.
 22 Compl. ¶¶ 219, 235. That alleged conduct occurred before Loomer voluntarily dismissed her prior
 23 suit and that dismissal “bars all grounds for recovery which *could have been asserted, whether*
 24 *they were or not*, in [the] prior suit.” *Costantini*, 681 F.2d at 1201.⁶ Loomer’s efforts to pad her
 25 RICO claims by asserting implausible Anti-Terrorism Act (ATA) and Smith Act predicates also
 26 do not change this fact, as she cannot “avoid the bar of res judicata merely because [she] now
 27

28 ⁶ Emphasis added and citations and internal quotations omitted throughout, unless otherwise noted.

1 alleges conduct by [Meta] not alleged in [her] prior suit.” *Id.* And any attempt to distinguish the
2 facts underlying her RICO claims from those alleged in her defamation suit only undermines her
3 suit further, for “to state a federal RICO claim, [she] must allege that all of the predicate acts, *taken*
4 *together, constitute a single course of conduct* aimed at benefitting the wrongdoer by harming
5 [her].” *Monterey Plaza Hotel Ltd. v. Local 483*, 215 F.3d 923, 927-928 (9th Cir. 2000) (RICO
6 claim precluded by prior state action under state law) (emphasis in original). Finally, Loomer
7 cannot avoid the res judicata bar by naming Mr. Zuckerberg as a defendant or listing her campaign
8 committee as a plaintiff, as both stand in privity to the parties to her previous defamation suit.
9 *Pedrina v. Chun*, 97 F.3d 1296, 1302 (9th Cir. 1996) (corporate officers in privity with
10 corporation); *Taylor v. Sturgell*, 553 U.S. 880, 895 (2008) (nonparties bound if “adequately
11 represented” in prior suit and parties to prior judgment cannot “relitigate[e] through a proxy”).

12 **II. LOOMER HAS NOT STATED A CIVIL RICO CLAIM**

13 The Court should reject Loomer’s latest attempt to recast her grievance about Meta’s
14 removal of her account as a RICO claim. RICO ““was enacted with a goal of eradicat[ing]
15 organized, long-term criminal activity.”” *Royce Int’l Broad. Corp. v. Field*, 2000 WL 236434, at
16 *4 (N.D. Cal. Feb. 23, 2000) (quoting *Midwest Grinding Co. v. Spitz*, 976 F.2d 1016, 1019 (7th
17 Cir. 1999)). It does not provide a cause of action to pursue the kind of garden-variety tort or
18 contract claims that Loomer has previously brought in response to these same events. *Nguyen v.*
19 *Chow*, 2014 WL 12625960, at *2 (N.D. Cal. Sept. 19, 2014); *Annulli v. Panikkar*, 200 F.3d 189,
20 200 (3d Cir. 1999), *abrogated on other grounds*, *Rotella v. Wood*, 528 U.S. 549 (2000).

21 Imposing RICO liability would be especially inappropriate here because Loomer
22 challenges conduct protected by Meta’s First Amendment right to “exercise ... editorial control
23 and judgment” over what content it disseminates through its communications platform. *See Miami*
24 *Herald Publ’g Co. v. Tornillo*, 418 U.S. 241, 257-58 (1974). This First Amendment protection
25 extends to “decisions about what content to include, exclude, moderate, filter, label, restrict, or
26 promote” on platforms such as Facebook. *O’Handley v. Padilla*, 2022 WL 93625, at *14 (N.D.
27 Cal. Jan. 10, 2022); *see also NetChoice, LLC v. Att’y Gen.*, 34 F.4th 1196, 1210 (11th Cir. 2022)
28 (holding that a platform “engages in ‘speech’ within the meaning of the First Amendment” when

1 it selectively removes user content). Loomer attempts to hold Meta liable for its exercise of
 2 editorial control and judgment, including its decisions to remove her content and block her from
 3 accessing Facebook. *See, e.g.*, Compl. ¶¶ 30, 210-11, 218-19, 235, 243-44. But courts must be
 4 wary of extending civil RICO’s “somewhat elastic” predicate acts to encompass such “fully
 5 protected First Amendment activity.” *Nat’l Org. for Women v. Scheidler*, 510 U.S. 249, 264 (1994)
 6 (Souter, J., concurring). And Meta is “entitl[ed] ... to dismissal on that basis.” *Id.*; *see also Savage*
 7 *v. Council on American-Islamic Relations, Inc.*, 2008 WL 2951281, at *10 (N.D. Cal. July 25,
 8 2008) (dismissing RICO claim that raised “serious First Amendment concerns”).

9 But even setting aside Meta’s First Amendment rights, Loomer’s RICO claim fails because
 10 her allegations do not support an entitlement to relief. To state a civil RICO claim, Loomer must
 11 plausibly allege “(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity
 12 (known as ‘predicate acts’) (5) causing injury to plaintiff’s business or property.” *Living Designs,*
 13 *Inc. v. E.I. Dupont de Nemours & Co.*, 431 F.3d 353, 361 (9th Cir. 2005). Loomer alleges that
 14 Meta and Mr. Zuckerberg, along with other social media websites, participated in an enterprise
 15 that committed a series of predicate acts under RICO by violating the federal wire fraud statute,
 16 the Hobbs Act, the Travel Act, the ATA, and the Smith Act. Compl. ¶¶ 332, 341-62. But her
 17 allegations satisfy none of RICO’s requirements. The Complaint does not plausibly allege an
 18 enterprise, a pattern, or injury to business or property. Nor does it plausibly allege any predicate
 19 act. It should be dismissed.⁷

20 A. Loomer Has Not Pleaded A RICO Enterprise

21 Loomer’s RICO claim fails at the outset because she has not plausibly alleged an

22 ⁷ Loomer’s claims for punitive damages independently should be dismissed because punitive
 23 damages are precluded under civil RICO. *See Sw. Marine, Inc. v. Triple A Mach. Shop, Inc.*, 720
 24 F. Supp. 805, 810 (N.D. Cal. 1989) (RICO “provides for treble damages which are themselves
 25 punitive in character.”); *Neibel v. Trans World Assur. Co.*, 108 F.3d 1123, 1130 (9th Cir. 1997)
 26 (crediting *Southwest Marine*’s holding that “punitive damages were unavailable directly through
 27 RICO”), *overruled on other grounds, United States v. Fernandez*, 388 F.3d 1199, 1228 (9th Cir.
 28 2004). A motion to dismiss under 12(b)(6) is the appropriate vehicle to dismiss damages claims
 that “are precluded as a matter of law.” *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 974
 (9th Cir. 2010); *see, e.g., Linares v. CitiMortgage, Inc.*, 2015 WL 2088705, at *8 (N.D. Cal. May
 5, 2015) (construing motion to strike as motion to dismiss and dismissing punitive damages claim
 where such damages were “not available”).

1 association-in-fact RICO enterprise. “[A]n association-in-fact enterprise is ‘a group of persons
2 associated together for a common purpose of engaging in a course of conduct.’” *Boyle v. United*
3 *States*, 556 U.S. 938, 946 (2009) (quoting *United States v. Turkette*, 452 U.S. 576, 583 (1981)).
4 Such an enterprise “must have a structure.” *Id.* at 945. A RICO plaintiff must plausibly allege that
5 enterprise members shared a “common purpose,” formed “‘a vehicle for the commission of two or
6 more predicate crimes,’” and that their “behavior was ‘ongoing’ rather than isolated activity.”
7 *Odom v. Microsoft Corp.*, 486 F.3d 541, 552-53 (9th Cir. 2007) (en banc). A RICO enterprise is
8 not proved by evidence that “several individuals, *independently and without coordination*, engaged
9 in a pattern of crimes listed as RICO predicates.” *Boyle*, 556 U.S. at 947 n.4.

10 The Complaint is bereft of plausible allegations as to “what exactly each individual did,
11 when they did it, or how they functioned together as a continuing unit.” *Doan v. Singh*, 617 F.
12 App’x 684, 686 (9th Cir. 2015) (holding plaintiff failed to plead RICO enterprise). Instead, it
13 conclusorily asserts that Defendants, as well as nonparties such as YouTube and Google, formed
14 an “associated in fact” enterprise, Compl. ¶ 332, that “has used and continues to fraudulently use
15 the pretext of ‘hate speech’ as cover for committing and continuing to commit illegal predicate
16 acts under the RICO statutes” against Loomer and others “in order to further multiple fraudulent
17 schemes,” *id.* ¶ 30. That does not suffice. “[A]n ‘entitlement to relief’ requires ‘more than labels
18 and conclusions.’” *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 995 (9th
19 Cir. 2014) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555 (2007)).

20 To the extent that the Complaint includes any specific allegations concerning the alleged
21 enterprise, they amount, at most, to “lawful parallel conduct,” which cannot establish a RICO
22 enterprise. *Vertkin v. Wells Fargo Home Mortg.*, 2011 WL 175518, at *4 (N.D. Cal. Jan. 18, 2011)
23 (citing *Twombly*, 550 U.S. at 557). Loomer alleges that Meta and Twitter have enacted policies
24 related to “hate speech” or “hateful conduct,” Compl. ¶¶ 99-107, 108-09, and have taken action to
25 enforce those policies. To be sure, both companies are alleged to have “banned” and “censored”
26 accounts, *id.* ¶¶ 161-98; permanently banned Loomer’s accounts, *id.* ¶¶ 210, 211; and banned or
27 frozen Donald Trump’s accounts, *id.* ¶¶ 308, 309. But Loomer has not plausibly alleged that Meta
28 and Twitter “associated together for a common purpose” by “coordinat[ing] their activities,”

1 *United States v. Christensen*, 828 F.3d 763, 780-781 (9th Cir. 2015), or working as “a cohesive
2 unit,” *Vertkin*, 2011 WL 175518, at *4.⁸ Nor does Loomer explain how the alleged members of
3 the enterprise “had relationships among each other with respect to the actual carrying out of what
4 they were each doing individually.” *Almanza v. United Airlines, Inc.*, 851 F.3d 1060, 1073 (11th
5 Cir. 2017). Her allegations therefore cannot support a RICO enterprise.

6 Nor can Loomer overcome her failure to show anything more than parallel conduct by
7 claiming that Mr. Zuckerberg participated in the alleged enterprise. To plead an enterprise
8 consisting of Meta and its CEO, Loomer must plausibly allege “the existence of a distinct
9 Enterprise, separate and apart from the general business of [Meta].” *In re JUUL Labs, Inc., Mktg.,
10 Sales Practices, & Prods. Liability Litig.*, 497 F. Supp. 3d 552, 603 (N.D. Cal. 2020). And to hold
11 an individual such as Mr. Zuckerberg liable under RICO, she must show that this distinct enterprise
12 was under his “direction or control.” *Id.* at 607 (analyzing role of CEO in alleged enterprise); *see
13 also Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993) (liability for conduct of enterprise requires
14 “some part in directing” the enterprise’s affairs). But Loomer has not plausibly alleged that Mr.
15 Zuckerberg was personally involved in operating or managing any enterprise distinct from Meta’s
16 general business, let alone that he participated in removing her account or other content-related
17 decisions underlying her RICO allegations. She points only to Mr. Zuckerberg’s general public
18 statements about Facebook’s policies and his views as the company’s CEO about how Meta should
19 exercise editorial judgment and control. *See, e.g.*, Compl. ¶¶ 49, 56, 77, 82, 85, 119, 203, 216, 282,
20 291-293. She does not, and cannot, show that Mr. Zuckerberg “conducted or participated in the
21 conduct of a racketeering enterprise, rather than just the business of [Meta] separate and apart from
22 any alleged racketeering acts.” *Ferrari v. Mercedes-Benz USA, LLC*, 2016 WL 7188030, at *3
23 (N.D. Cal. Dec. 12, 2016) (analyzing roles of current and former CEOs in alleged enterprise).

24
25 ⁸ Nor do Loomer’s citations to a handful of ongoing lawsuits naming members of the supposed
26 enterprise help establish a common purpose to engage in the predicate acts that she alleges, as
27 these other lawsuits are unrelated to the claims she brings in this action. *See, e.g.*, Compl. ¶ 33
28 (allegations that Mr. Zuckerberg and Google’s CEO “secretly conspired . . . to guarantee Defendant
Facebook would both bid in and win a fixed percentage of ad auctions.”); *id.* ¶ 37 (allegations that
Meta “was reported to have engaged in [a] fraudulent scheme” relating to privacy).

B. Loomer Has Not Pleaded A “Pattern” Of Racketeering Activity

Loomer has also failed to plead the essential element of a “pattern” of racketeering activity. *See Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992). To establish the requisite “pattern,” a plaintiff must allege that “the racketeering predicates are related and ‘that they amount to or pose a threat of continued criminal activity.’” *Turner v. Cook*, 362 F.3d 1219, 1229 (9th Cir. 2004). Loomer’s Complaint comes up short on both components.

Where “[t]he purpose, result, victim and method” are “strikingly different” for each of the predicate acts, the relatedness requirement is not met. *Howard v. Am. Online Inc.*, 208 F.3d 741, 749 (9th Cir. 2000). That is precisely the case here. For example, Loomer appears to allege that Meta defrauded her and unnamed others by allegedly applying its Community Standards inconsistently and by limiting particular politicians’ access to Facebook after allegedly stating that politicians would be able to access and post content to Facebook without regard to the restrictions of the Community Standards. *See* Compl. ¶ 217, 280. This alleged conduct, which Loomer cites in support of her wire fraud claim, shares no overlapping purpose, result, victim, or method with her allegations that Meta attempted to provide material support to terrorist groups, *id.* ¶ 354, or to advocate for the overthrow of the government, *id.* ¶ 356-358, by allowing certain accounts to remain on Facebook. Loomer does not, in fact, assert that she was injured by the alleged ATA and Smith Act violations at all. She was not. Those purported predicate acts are premised on decisions to remove (or not remove) content that was posted by other third parties and are not alleged to have had any impact on Loomer. *See id.* ¶¶ 288-300 (ATA); *id.* ¶¶ 301-12 (Smith Act).

Loomer likewise fails to plausibly allege a “threat of continued criminal activity,” as required to plead a RICO pattern. *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989). She claims to have shown “Open Ended Continuity,” asserting that, as a group, “Defendants continue to engage in the predicates listed herein,” which are “supported by Defendants’ policies and procedures for its ongoing, legitimate businesses.” Compl. ¶ 336-338. These conclusory allegations do not suffice. Loomer must plausibly allege “past conduct that by its nature projects into the future with a threat of repetition.” *H.J. Inc.*, 492 U.S. at 241. She does not do so. Loomer bases her allegation that Meta extorted her on a single action that the company took in May 2019.

1 Compl. ¶¶ 211, 346-347. Her wire fraud allegations hinge on statements allegedly made in October
 2 2019, *id.* ¶¶ 216-217, 281-282, that are purportedly inconsistent with Meta’s conduct in November
 3 2019, *id.* ¶ 218-223. And as discussed above, her ATA and Smith Act allegations do not describe
 4 “related predicates” at all. *See H.J. Inc.*, 492 U.S. at 242. Like the allegations found insufficient to
 5 establish open-ended continuity in *Howard*, Loomer’s Complaint “present[s] no facts indicating
 6 that [these alleged predicate acts] would continue into the future.” *See* 208 F.3d at 750. She
 7 describes, at most, the kind of “isolated or sporadic acts” that do not suffice to establish a RICO
 8 pattern. *Sun Sav. & Loan Ass’n v. Dierdorff*, 825 F.2d 187, 193 (9th Cir. 1987).

9 **C. Loomer Has Not Pleaded A Cognizable Injury Proximately Caused By The**
 10 **Alleged Predicate Acts**

11 Loomer does not plead a cognizable RICO injury because she does not plausibly allege
 12 that she “has been injured in [her] business or property” as a result of Facebook’s ban. *Canyon*
 13 *County v. Syngenta Seeds, Inc.*, 519 F.3d 969, 975 (9th Cir. 2008). A RICO injury “requires proof
 14 of concrete financial loss, and not mere ‘injury to a valuable intangible property interest.’” *Oscar*
 15 *v. Univ. Students Coop. Ass’n*, 965 F.2d 783, 785 (9th Cir. 1992), *abrogated on other grounds by*
 16 *Diaz v. Gates*, 420 F.3d 897, 899 (9th Cir. 2005) (en banc). As this Court has recognized, intangible
 17 injuries, such as “[c]ivil rights violations and injury to reputation,” “do not fall within the
 18 statutory definition of racketeering activity’ and thus ‘fail[] to state a claim under RICO.’” *Feng*
 19 *v. County of Santa Clara*, 2019 WL 7194475, at *8 (N.D. Cal. Dec. 26, 2019) (quoting *Bowen v.*
 20 *Oistead*, 125 F.3d 800, 806 (9th Cir. 1997)).

21 Most of Loomer’s asserted injuries, including “reputational damage,” Compl. ¶ 243,
 22 “deprivation of equal access to voters,” *id.* ¶ 244, “the loss of votes in a federal election,” *id.*, and
 23 “the loss of ... intangible rights, equal opportunity, [and] campaign exposure,” *id.* ¶ 362, do not
 24 survive this basic requirement to plead a “tangible financial loss” and therefore are not cognizable
 25 under RICO, *Diaz*, 420 F.3d at 900. Her alleged voting-related injuries do not even arguably
 26 involve business or property interests; nor is the alleged damage to her reputation or goodwill
 27 redressable under RICO. *C&M Café v. Kinetic Farm, Inc.*, 2016 WL 6822071, at *8 (N.D. Cal.
 28 Nov. 18, 2016) (reputational harm not cognizable RICO injury); *In re Volkswagen “Clean Diesel”*

1 *Mktg., Sales Practices, & Prods. Liability Litig.*, 2019 WL 6749534, at *4 (N.D. Cal. Dec. 6, 2019)
 2 (“[H]arm to goodwill is not recoverable under RICO.”).

3 As for Loomer’s remaining alleged injuries—“lost employment opportunities,” Compl.
 4 ¶ 243, “lost future profits,” *id.*, and “deprivation of ... campaign donations,” *id.* ¶ 244—the
 5 Complaint fails plausibly to allege that any predicate act proximately caused these injuries, as
 6 RICO requires. *See Syngenta*, 519 F.3d at 972.⁹ A RICO plaintiff must identify “some direct
 7 relation between the injury asserted and the injurious conduct alleged.” *Id.* at 981 (quoting *Holmes*
 8 *v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992)). This requirement “is not easily met,” *Sheperd*
 9 *v. Am. Honda Motor Co.*, 822 F. Supp. 625, 629 (N.D. Cal. 1993), and Loomer fails to meet it
 10 here. Like the injuries that were held insufficient to state a RICO claim in *Oscar*, Loomer’s alleged
 11 losses are “purely speculative.” *Diaz*, 420 F.3d at 898 (quoting *Oscar*, 965 F.2d at 787). She “never
 12 alleged that she wanted or tried to” pursue opportunities for employment or future profit, or that
 13 Defendants stood in her way. *Id.* Because these allegations “require[] the Court to move beyond
 14 the first step in the causal chain” in order to trace Loomer’s injuries to Meta, they are too indirect
 15 to establish a RICO injury. *Fields v. Twitter, Inc.*, 881 F.3d 739, 745 (9th Cir. 2018) (citing *Hemi*
 16 *Grp., LLC v. City of New York*, 559 U.S. 1, 8-12 (2010)).

17 Nor does Loomer plead the requisite “direct causal connection” between the challenged
 18 conduct—Meta’s decision to ban her from Facebook—and the loss of campaign donations she
 19 claims. *Anza v. Ideal Steel Supply Co.*, 547 U.S. 451, 460 (2006). Indeed, some of her allegations
 20 suggest the opposite causal connection. Loomer won the Republican primary *after* she was banned
 21 from Facebook, *see* Compl. ¶ 239, and when she announced her 2022 congressional run, she touted
 22 her de-platforming and “‘Big Tech’[’s] efforts to silence everyday Americans.” Manjarres, *Laura*

23 _____
 24 ⁹ It is also doubtful whether any of these injuries could qualify as injuries to Loomer’s business or
 25 property interests. The Supreme Court has noted that, “perhaps because of its very uncertainty, the
 26 interest in anticipated gains has traditionally been viewed as less compelling than other property-
 27 related interests.” *Andrus v. Allard*, 444 U.S. 51, 66 (1979). And in upholding dismissal of a RICO
 28 claim involving the sale of trading cards, the Ninth Circuit approvingly quoted the Fifth Circuit’s
 observation that “[i]njury to mere expectancy interests ... is not sufficient to confer RICO
 standing.” *Chaset v. Fleer/Skybox Int’l LP*, 300 F.3d 1083, 1087 (9th Cir. 2002) (quoting *Price v.*
Pinnacle Brands, 138 F.3d 602, 607 (5th Cir. 1998) (per curiam)). But the Court need not resolve
 that issue, given Loomer’s failure to plausibly allege proximate cause as to these supposed injuries.

1 *Loomer Announces 2022 Congressional Run*, The Floridian (Feb. 24, 2021),
2 <https://floridianpress.com/2021/02/laura-loomer-announces-2022-congressional-run> (Barnet
3 Decl. Ex. 9) (cited at Compl. ¶ 242 n.209). Her assertion that she lost out on campaign
4 contributions thus invites this Court to engage in exactly the type of “intricate, uncertain inquir[y]”
5 that RICO’s proximate cause element is designed to prevent. *Anza*, 547 U.S. at 459-460 (holding
6 that alleged RICO injury lacked proximate cause because it “could have resulted from factors other
7 than petitioners’ alleged acts of fraud”); see *Westchester Cnty. Indep. Party v. Astorino*, 137 F.
8 Supp. 3d 586, 615 (S.D.N.Y. 2015) (allegation of lost campaign donations was “indefinite and
9 unprovable” and thus insufficient to establish RICO injury). This Court should decline to do so.

10 **D. Loomer Has Not Pleaded Any Predicate Act**

11 Beyond all these defects, Loomer fails to satisfy the most basic requirement under RICO:
12 she has not plausibly alleged any “racketeering activity (known as predicate acts).” *Eller v.*
13 *EquiTrust Life Ins. Co.*, 778 F.3d 1089, 1092 (9th Cir. 2015).

14 **1. Loomer Has Not Plausibly Alleged Wire Fraud**

15 Wire fraud allegations must be pleaded with particularity. *Swartz v. KPMG LLP*, 476 F.3d
16 756, 764 (9th Cir. 2007) (citing Fed R. Civ. P. 9(b)). To do so, Loomer must set forth specific facts
17 establishing “(1) a scheme to defraud, (2) the use of the mails or wires to further that scheme, and
18 (3) the specific intent to defraud.” *JUUL Labs*, 497 F. Supp. 3d at 595. Not every alleged
19 misrepresentation amounts to criminal fraud. The statute prohibits “only deceptive ‘schemes to
20 deprive [the victim of] money or property,’” *Kelly v. United States*, 140 S. Ct. 1565, 1571 (2020),
21 and requires the intent to “obtain money or property from the one who is deceived,” *United States*
22 *v. Lew*, 875 F.2d 219, 221 (9th Cir. 1989). Loomer’s allegations do not meet these standards.

23 *First*, Loomer does not adequately allege any deceptive conduct. Her wire fraud claim does
24 not meet the basic requirement under Rule 9(b) to plead fraud with particularity. Her theory
25 appears to be that Meta “devise[d] an artifice of community policies” to somehow defraud her and
26 others. Compl. ¶ 344. But nowhere does she “state the time, place, and specific content of the false
27 representations” Meta allegedly made to her concerning its Community Standards. *Swartz*, 476
28 F.3d at 764. Nor does she “set forth an explanation as to why the statement or omission complained

1 of was false or misleading.” *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1548 (9th Cir. 1994) (en
 2 banc). That alone is a sufficient basis for holding that she failed to plead this alleged predicate act.
 3 *E.g., Titan Glob. LLC v. Organo Gold Int’l, Inc.*, 2012 WL 6019285, at *7 (N.D. Cal. Dec. 2,
 4 2012).¹⁰

5 Beyond that threshold defect, there are others. While Loomer appears to also allege that
 6 Meta fraudulently “promised [her] access to its network” as a politician, Compl. ¶ 217, she has not
 7 plausibly alleged any “affirmative, material misrepresentation” to that effect, *JUUL Labs.*, 497 F.
 8 Supp. 3d at 595 (quoting *United States v. Green*, 592 F.3d 1057, 1064 (9th Cir. 2010)). As reported
 9 in articles the Complaint incorporates by reference, Meta exempted “direct statement[s] from a
 10 candidate or campaign ... from policies designed to *prevent misinformation*”—not its Community
 11 Standards more broadly (or, in particular, the dangerous individuals and organizations policy that
 12 was the basis for Meta’s decision to ban Loomer from the platform). Hern, *Facebook Exempts*
 13 *Political Ads From Ban On Making False Claims*, Guardian (Oct. 4, 2019),
 14 [https://www.theguardian.com/technology/2019/oct/04/facebook-exempts-political-ads-ban-](https://www.theguardian.com/technology/2019/oct/04/facebook-exempts-political-ads-ban-making-false-claims)
 15 [making-false-claims](https://www.theguardian.com/technology/2019/oct/04/facebook-exempts-political-ads-ban-making-false-claims) (Barnet Decl. Ex. 10) (cited at Compl. ¶ 281 n.238); *see Boyle, Facebook’s*
 16 *Updated Advertising Policy Could Enable Politicians To Spread Misinformation*, Newsweek (Oct.
 17 3, 2019), <https://www.newsweek.com/trump-biden-facebook-misleading-ads-1463054> (Barnet
 18 Decl. Ex. 11) (cited at Compl. ¶ 281 n.238). Nor does Loomer explain how Mr. Zuckerberg’s
 19 alleged statement that he “would not censor social media posts from politicians,” Compl. ¶ 282,
 20 represented a promise that users would retain unconditional access to Facebook no matter what
 21 content they posted, let alone a promise that Meta would allow individuals like Loomer to *return*
 22 to the platform if they were previously banned for violating the Community Standards.¹¹

23 _____
 24 ¹⁰ The Complaint appears to suggest, though without the particularity required by Rule 9(b), that
 25 the Community Standards are fraudulent because Meta allegedly applies them inconsistently. That
 26 theory also fails because Loomer does not allege any statement by Meta that it perfectly enforces
 27 its Community Standards or that there can be no reasonable disagreement as to whether particular
 28 content violates those Standards. Thus, allegations that Meta did not remove content that violated
 its Community Standards (in Loomer’s view) or removed content that did not violate its
 Community Standards (again, in Loomer’s view), *see, e.g.*, Compl. ¶¶ 157-159, do not plausibly
 allege that Meta’s Community Guidelines Standards are an “artifice,” *id.* ¶ 344.

¹¹ What Mr. Zuckerberg actually said, according to the article on which this allegation relies and

1 The remaining alleged statements on this topic are statements of opinion that are not
2 falsifiable. According to the Complaint, Mr. Zuckerberg stated that he did not believe it was “right
3 for tech companies to censor politicians in a democracy,” Compl. ¶ 216, and a Facebook
4 spokesperson said the company “did not think it would be appropriate to prevent a politician’s
5 speech from reaching its audience,” *id.* ¶ 281. These statements are “expressions of opinion,” and
6 thus “not actionable as fraud.” *Eclectic Props.*, 751 F.3d at 1000. Because Loomer does not
7 identify any statements that were false or misleading, she cannot plausibly allege that she or other
8 users could be deceived by any of them. Her attempt to disguise her challenge to the ban on her
9 account as wire fraud fails.

10 *Second*, Loomer’s reliance on wire fraud fails for the independent reason that she does not
11 plausibly allege that Meta devised a scheme with the goal of obtaining money or property by means
12 of a false or misleading statement. The scheme she alleges is nonsensical. According to Loomer,
13 Meta carried out a bait-and-switch. It allegedly lured political candidates onto its platform “under
14 the false pretense and false promises that advertisements from political candidates would *not* be
15 subject to third-party review or censorship,” only to later change its policy. Compl. ¶¶ 279, 280.
16 That change in policy, in turn, allegedly permitted Meta to freeze then-President Trump’s
17 Facebook account and remove Loomer’s campaign page a day after she attempted to set it up—
18 thereby preventing those accounts from purchasing any advertising on Facebook. *Id.* ¶¶ 308, 218-
19 219. Loomer’s own case perfectly demonstrates why this alleged scheme is not plausibly related
20 to any effort to “deprive [her] of money or property by means of deception.” *United States v.*
21 *Miller*, 953 F.3d 1095, 1103 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 1085 (2021). The wire fraud
22 statute is meant “to punish wrongful transfers of property from the victim to the wrongdoer, not to

23 _____
24 which is incorporated by reference, is: “My belief is that in a democracy, I don’t think that we
25 want private companies censoring politicians in the news.” “I generally believe that as a principle,
26 people should decide what is credible and what they want to believe, who they want to vote for.
27 And I don’t think that should be something that we want tech companies or any kind of company
28 doing.” Martin, *Zuckerberg Tells Fox News Facebook Won’t Censor Politicians, While Warren
Says Facebook Could Help Trump Win Again*, Newsweek (Oct. 17, 2019),
<https://www.newsweek.com/zuckerberg-tells-fox-news-facebook-wont-censor-politicians-while-warren-says-facebook-could-help-1466117> (Barnet Decl. Ex. 12) (cited at Compl. ¶ 282 n.239).
These are statements of opinion and not actionable in fraud. *See Eclectic Props.*, 751 F.3d at 1000.

1 salve wounded feelings.” *Monterey Plaza Hotel L.P.*, 215 F.3d at 927. It thus prohibits only
2 conduct with an “acquisitive” purpose. *Id.* Had Meta been acting with an “acquisitive” purpose,
3 *id.*—rather than the purpose of keeping abuse off the platform—it would not have removed
4 Loomer’s campaign page *before* she even was able to purchase any advertisements on Facebook.
5 Because Loomer has not plausibly alleged that Meta acted with an “intent to deceive and cheat”
6 by obtaining property, dismissal is appropriate. *R.J. v. Cigna Behavioral Health, Inc.*, 2021 WL
7 1110261, at *10 (N.D. Cal. Mar. 23, 2021) (dismissing wire fraud claim on this ground); *see also*
8 *Focus 15, LLC v. NICO Corp.*, 2022 WL 2355537, at *5 (N.D. Cal. June 30, 2022) (similar).

9 2. Loomer Has Not Pleaded Extortion Under The Hobbs Or Travel Acts

10 Loomer does not plausibly allege any conduct that amounts to extortion under the Hobbs
11 Act, 18 U.S.C. § 1951(a), or under Florida or California law, which are incorporated by the federal
12 Travel Act, *see id.* U.S.C. § 1952(b)(i)(2). She fails to establish multiple required elements of
13 extortion, foreclosing her claims under both the Hobbs Act and the Travel Act.

14 *First*, Loomer does not plausibly allege that Meta acted wrongfully or without justification,
15 an essential element under both predicates. *See Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1132 (9th Cir.
16 2014) (extortion under Hobbs Act and California law require “wrongful” use of force or violence);
17 *Sanchez-Torres v. State*, 322 So. 3d 15, 22-23 (Fla. 2020) (under Florida law, extortion requires
18 act “without any lawful justification”). She alleges generally that Meta acted wrongfully by
19 threatening to injure the “property and reputation” of her and others similarly situated and “expose
20 [them] to the disgrace of being banned, labeled a ‘dangerous individual,’ and placed on a
21 dangerous individual’s [sic] list.” Compl. ¶¶ 347, 352. But to avoid “transform[ing] a wide variety
22 of legally acceptable business dealings into extortion,” a plaintiff alleging extortion must point to
23 “a pre-existing right to be free from the threatened harm.” *See Levitt*, 765 F.3d at 1132-33; *see also*
24 *Rothman v. Vedder Park Mgmt.*, 912 F.2d 315, 317-318 (9th Cir. 1990) (tenants had no right to be
25 free from landlord’s threats of future rent increases). Loomer fails to do so. She alleges no
26 preexisting legal right to access Facebook while violating its policies or to use Facebook without
27 being deemed a dangerous individual under its Community Standards. To the contrary, Facebook
28 specifically requires users to comply with its Community Standards in its Terms of Service and

1 notifies users that their account may be removed if they do not. *See supra* p. 4. Loomer alleges, at
 2 most, that Meta “is withholding a benefit that [Meta] makes possible and maintains,” which Meta
 3 “has no obligation to do.” *Levitt*, 765 F.3d at 1133. Loomer therefore cannot plausibly allege that
 4 Meta acted “wrongful[ly] or “without any lawful justification” when it removed her accounts.

5 *Second*, Loomer does not plausibly allege that Defendants obtained any property from her,
 6 and so cannot plead a violation of the Hobbs Act or California’s extortion law. *See United States*
 7 *v. Kozoil*, 993 F.3d 1160, 1168 (9th Cir. 2021) (Hobbs Act); *Cobb v. JPMorgan Chase Bank, N.A.*,
 8 2013 WL 6201414, at *13 (N.D. Cal. Nov. 27, 2013) (California law). Extortion under these
 9 statutes “require[s] not only the deprivation but also the *acquisition* of property.” *Scheidler v. Nat’l*
 10 *Org. of Women, Inc.*, 537 U.S. 393, 404 (2003). Loomer must plead that Meta received “something
 11 of value” that it “could exercise, transfer, or sell.” *Id.* at 405. She has not.

12 Loomer’s Complaint does not describe any property—tangible or intangible—that Meta
 13 could have acquired through its alleged acts of extortion.¹² She asserts that Defendants extorted
 14 “intangible property” from her, Compl. ¶ 346, that Meta “attempts and conspires to obtain
 15 contractual, speech and other rights and intellectual property consensually from its members
 16 induced by the threat of banning and labeling,” *id.* ¶ 256, and that Meta compelled her and others
 17 “to refrain, against their will, from speaking to or associating with other[s]” Meta disfavored, *id.*
 18 at 347. But she does not identify any intangible property, intellectual property, or contract rights
 19 that Defendants attempted to obtain by banning her or others from Facebook, nor would that make
 20 any sense. And Loomer’s allegation that Defendants sought to force her and others not to speak to
 21 or associate cannot support an extortion claim because her “speech rights” are not “something of
 22 value” that Defendants could possibly obtain in order to “exercise, transfer, or sell.” *Scheidler*, 537

23
 24 ¹² Loomer has not alleged extortion even assuming intangible property can support an extortion
 25 claim, but that is an open question. The Supreme Court has expressly left the question open, *see*
 26 *Scheidler*, 537 U.S. at 402, as has the Ninth Circuit, *see United States v. McFall*, 558 F.3d 951,
 27 957 & n.7 (9th Cir. 2009). Six years before the Ninth Circuit’s decision in *McFall*, a judge in this
 28 District held that a defendant obtains property under the Hobbs Act if he “gains control over the
 use of a competitor’s business asset, even if the asset is ... intangible,” because in doing so he
 “does more than coerce by restricting the competing business’s freedom of action.” *Dooley v. Crab*
Boat Owners Ass’n, 271 F. Supp. 2d 1207, 1213 (N.D. Cal. 2003). Loomer at most alleges a
 “restrict[ion]” of her “freedom of action” that would not support an extortion claim under *Dooley*.

1 U.S. at 405. To plead extortion, “[i]t is not enough” to allege that Defendants “gain[ed] some
 2 speculative benefit” by “restricting [Loomer’s] activities”—“an alleged extortionist must actually
 3 appropriate (or attempt to appropriate) the victim’s property.” *United States v. McFall*, 558 F.3d
 4 951, 957-958 (9th Cir. 2009). Because Loomer does not plausibly allege that Defendants attempted
 5 to acquire property, she cannot state an extortion claim.

6 3. Loomer Has Not Pleaded Material Support Under The ATA

7 Loomer alleges a criminal violation of the Anti-Terrorism Act’s material-support
 8 provision. As discussed *supra*, Loomer generally has failed to plausibly allege a pattern of
 9 racketeering activity. But even assuming that some of the alleged predicate acts constitute the
 10 requisite pattern, this one certainly is not part of any such pattern. Her claim that Meta has not
 11 removed every account and page on Facebook associated with a terrorist organization, *see* Compl.
 12 ¶¶ 294-295, 354, is entirely unrelated to her claim that Meta defrauded her into creating Facebook
 13 accounts or extorted her through its dangerous individuals and organizations policy. These alleged
 14 predicate acts have different purposes, results, and victims. *See Howard*, 208 F.3d at 749. Indeed,
 15 Loomer at least claims to be an alleged victim of the wire fraud, Hobbs Act, and Travel Act
 16 violations but she does not and could plausibly claim to be a victim of the alleged ATA violation.

17 Regardless, Loomer fails to plausibly allege a criminal violation of the ATA, which makes
 18 it a crime to “knowingly provide[] material support or resources to a foreign terrorist organization,”
 19 or to “attempt[] or conspire[] to do so.” 18 U.S.C. § 2339B(a)(1). To violate the statute, a defendant
 20 must both “know[] about the organization’s connection to terrorism,” *Holder v. Humanitarian Law*
 21 *Project*, 561 U.S. 1, 16-17 (2010), and deliberately aid that organization, *United States v. Al*
 22 *Kassar*, 660 F.3d 108, 129 (2d Cir. 2011). Loomer has not plausibly alleged that Meta knowingly
 23 attempted to provide material support to any designated FTO because she has not plausibly alleged
 24 that Meta knew any particular account was affiliated with an FTO and failed to remove it. She
 25 vaguely alleges that Hezbollah, Hamas, ISIS, and Al Qaida maintain accounts and pages on
 26 Facebook but not that Meta knew of, and declined to remove, any specific account or page. Compl.
 27 ¶¶ 294-295.¹³

28 ¹³ The allegation that “Defendants” “announc[ed] that the political wings of known foreign terrorist

1 To the contrary, as the Complaint alleges and as news articles that it incorporates by
 2 reference make clear, Meta removes a tremendous amount of terrorist content from Facebook, *see*
 3 Compl. ¶ 149, and any that remains is content that “[e]ll through the cracks,” Frenkel & Hubbard,
 4 *After Social Media Bans, Militant Groups Found Ways to Remain*, N.Y. Times (Apr. 19, 2019),
 5 <https://www.nytimes.com/2019/04/19/technology/terrorist-groups-social-media.html> (Barnet
 6 Decl. Ex. 13) (cited at Compl. ¶ 294 n.250). In other words, it is content that Meta does not detect.
 7 Thus, Loomer has not plausibly alleged that Meta knew that any particular account was affiliated
 8 with a FTO. *See Hussein v. Dahabshiil Transfer Servs. Ltd.*, 230 F. Supp. 3d 167, 176 (S.D.N.Y.
 9 2017) (inference of knowledge “generally implausible when the only allegations are that the
 10 defendants provided ‘routine’ banking services”), *aff’d* 705 F. App’x 40 (2d Cir. 2017). Nor has
 11 she plausibly alleged the requisite intent: Meta cannot intentionally provide an account to a FTO
 12 if it is not even aware that it is providing an account to that particular user.

13 **4. Alleged Violations Of The Smith Act Are Not RICO Predicate Acts**
 14 **And Not Plausibly Pled**

15 Under RICO, “‘racketeering activity’ consists of no more and no less than commission of
 16 a predicate act.” *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 495 (1985) (citing 18 U.S.C.
 17 § 1961(1)); *see Smith v. Levine Leichtman Cap. Partners, Inc.*, 723 F. Supp. 2d 1205, 1214 (N.D.

18 _____
 19 organizations could use its platforms,” Compl. ¶ 354, improperly lumps together all defendants.
 20 As this Court has noted, “grouping multiple defendants together in a broad allegation is insufficient
 21 to provide the defendants with fair notice of the claims against them” and violates the pleading
 22 requirements of Rule 8. *Glaser v. Nationstar Mortg., LLC*, 2017 WL 1861850, at *5 (N.D. Cal.
 23 May 9, 2017). Loomer therefore cannot “allege[] ‘that multiple parties did an act, without
 24 identifying which party did what specifically.’” *McCracken v. Wells Fargo Bank NA*, 2017 WL
 25 1428716, at *2 (N.D. Cal. Apr. 20, 2017). But Loomer identifies only a single statement by a
 26 Twitter employee about Twitter’s past practices. *Id.* ¶ 296. She alleges no such statement by Meta
 27 or Mr. Zuckerberg. And the article the allegation incorporates by reference specifically notes that
 28 Meta does not “keep up the content of ... Hezbollah and Hamas.” Birnbaum, *Twitter Takes Down
 Hamas, Hezbollah-Affiliated Accounts After Lawmaker Pressure*, The Hill (Nov. 4, 2019),
<https://thehill.com/policy/technology/468866-twitter-takes-down-hamas-hezbollah-affiliated-accounts-after-lawmaker> (Barnet Decl. Ex. 14) (cited at Compl. ¶ 296 n.252). Separately, her
 allegations that Meta allowed Taliban supporters to use Facebook cannot support an ATA claim
 because, as she concedes, the Taliban is not a designated FTO. *See* 18 U.S.C. § 2339B(g)(6)
 (“[T]he term ‘terrorist organization’ means an organization designated as a terrorist organization
 under section 219 of the Immigration and Nationality Act.”); Compl. ¶ 297-298.

1 Cal. 2010) (“‘Racketeering activity’ is defined in 18 U.S.C. § 1961(1)(B) as including any act
 2 ‘indictable’ under certain enumerated federal criminal statutes”). A RICO claim “fails as a
 3 matter of law” if based on statutory violations that “are not within the enumerated predicate acts
 4 that may amount to a ‘pattern of racketeering activity.’” *Banks v. ACS Educ.*, 638 F. App’x 587,
 5 589 (9th Cir. 2016). Because violations of the Smith Act, 18 U.S.C. § 2385, are not predicate acts
 6 under RICO, *id.* § 1961(1), Loomer’s related allegations cannot support her RICO claim.

7 In any event, Loomer comes nowhere close to pleading a Smith Act violation. The statute
 8 prohibits various forms of advocacy or organizing with the intent to overthrow the government by
 9 force or violence. *See Dennis v. United States*, 341 U.S. 494, 499 (1951). The defendant must
 10 promote an “effort to instigate action to that end,” and possess a “specific intent to accomplish
 11 [government] overthrow.” *Yates v. United States*, 354 U.S. 298, 318, 331 (1957), *overruled on*
 12 *other grounds by Burks v. United States*, 437 U.S. 1, 8-10 (1978). None of Loomer’s allegations
 13 plausibly establish these required elements. Any allegations that Meta advocated the overthrow of
 14 the government by removing content related to efforts to contest the 2020 presidential election are
 15 frivolous. Compl. ¶¶ 303, 307-310. And allegations that Meta allowed content encouraging others
 16 “to harass and disrupt the lives of government officials and post direct threats,” *id.* ¶ 302, removed
 17 pro-law enforcement content, *id.* ¶ 306, or allowed anti-law enforcement content, *id.* ¶ 304-05, fall
 18 well short of plausibly alleging the existence of any efforts to overthrow the government, let alone
 19 that Meta advocated such efforts or “instigate[d] action to that end,” *Yates*, 354 U.S. at 318.¹⁴

20 **III. LOOMER HAS NOT STATED A CLAIM FOR RICO CONSPIRACY**

21 Loomer’s RICO conspiracy claim fails as well. Because she has not plausibly alleged a
 22 substantive RICO offense, *see supra* Part II, she “cannot claim that a conspiracy to violate RICO
 23 existed.” *Howard*, 208 F.3d at 751. Her conspiracy claim fails for the additional reason that the
 24 Complaint does not plausibly allege an agreement between Meta and others to commit the alleged
 25 predicate acts. *Baumer v. Pacht*, 8 F.3d 1341, 1347 (9th Cir. 1993). To survive a motion to dismiss
 26 a conspiracy claim, a plaintiff must put forward “allegations plausibly suggesting (not merely

27 _____
 28 ¹⁴ Like the alleged ATA predicate act, the alleged Smith Act predicate also is not plausibly part of
 any pattern of racketeering activity. It is entirely unrelated to her wire fraud and extortion claims.

1 consistent with) agreement.” *Twombly*, 550 U.S. at 557. Loomer’s allegations that Meta “conspired
 2 and agreed to” engage in racketeering activity, *see* Compl. ¶ 368, are entirely conclusory. They do
 3 not “plausibly suggest an illicit accord.” *Ashcroft v. Iqbal*, 556 U.S. 662, 680 (2009). Instead, they
 4 are precisely the sort of “bare allegations ... [that] provide no basis to infer assent to contribute to
 5 a common enterprise.” *Baumer*, 8 F.3d at 1347; *see also Iqbal*, 556 U.S. at 680 (alleged conduct
 6 “d[oes] not plausibly suggest an illicit accord” when it is “not only compatible with, but indeed ...
 7 more likely explained by, lawful, unchoreographed free-market behavior.”). *See supra* Part II.A.

8 **IV. SECTION 230 BARS LOOMER’S CLAIMS**

9 Loomer’s claims fail for the independent reason that they are barred by Section 230. As
 10 the Ninth Circuit has repeatedly recognized, “any activity that can be boiled down to deciding
 11 whether to exclude material that third parties seek to post online is perforce immune under section
 12 230” as a traditional editorial function. *Fair Hous. Council of San Fernando Valley v.*
 13 *Roommates.Com, LLC*, 521 F.3d 1157, 1170-1171 (9th Cir. 2008) (en banc). Section 230 bars a
 14 claim when: “(1) Defendant is a ‘provider or user of an interactive computer service’; (2) the
 15 information for which Plaintiffs seeks to hold Defendant liable is ‘information provided by another
 16 information content provider’; and (3) Plaintiffs’ claim seeks to hold Defendant liable as the
 17 ‘publisher or speaker’ of that information.” *Sikhs for Justice “SFJ,” Inc. v. Facebook, Inc.*, 144 F.
 18 Supp. 3d 1088, 1094-1095 (N.D. Cal. 2015), *aff’d*, 697 F. App’x 526 (9th Cir. 2017). Each
 19 condition is satisfied as to Loomer’s claims.

20 *First*, both Meta and Mr. Zuckerberg are “provider[s]” of an “interactive computer
 21 service.” Facebook is an “interactive computer service” that Meta provides. *See Calise v. Meta*
 22 *Platforms, Inc.*, 2022 WL 1240860, at *2 (N.D. Cal. Apr. 27, 2022); *Sikhs for Justice*, 144 F. Supp.
 23 3d at 1093; *see also Dyroff v. Ultimate Software Grp.*, 934 F.3d 1093, 1097 (9th Cir. 2019). As for
 24 Mr. Zuckerberg, Loomer seeks to hold him liable for “his role in making [an interactive computer
 25 service] available.” *Klayman v. Zuckerberg*, 753 F.3d 1354, 1357-1358 (D.C. Cir. 2014); Compl.
 26 ¶¶ 216-217, 282, 292-293. He is thus subject to the same Section 230 protections as Meta.

27 *Second*, Loomer’s claims all arise out of content created by third parties, not by Meta. All
 28 of Loomer’s claims complain about Meta’s treatment of content that she and other third parties

1 posted to Facebook. *See* Compl. ¶¶ 276, 279, 284 (wire fraud); *id.* ¶¶ 256, 258 (Hobbs Act); *id.* ¶¶
2 263, 265, 270 (Travel Act); *id.* ¶¶ 294-295, 298 (ATA); *id.* ¶ 302-309 (Smith Act). Loomer does
3 not allege that either Meta or Mr. Zuckerberg played any role in the creation of the content that
4 was displayed on or removed from Facebook. Because this content was “created entirely by
5 individuals or entities” other than Meta and Mr. Zuckerberg, this Section 230 prerequisite is
6 satisfied. *Sikhs for Justice*, 144 F. Supp. 3d at 1094; *see also, e.g., Fyk v. Facebook, Inc.*, 808 F.
7 App’x 597, 598 (9th Cir. 2020); *Federal Agency of News LLC v. Facebook, Inc.*, 395 F. Supp. 3d.
8 1295 (N.D. Cal. 2019).

9 *Third*, Loomer’s claims all seek to impose liability on Meta for its decision to remove her
10 and others’ content and thus impermissibly seek to treat Meta as a publisher of third-party content.
11 “[W]hat matters is not the name of the cause of action,” but whether the claim seeks to impose
12 liability for “publishing conduct”—such as “reviewing, editing, and deciding whether to publish
13 or to withdraw from publication third-party content.” *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1101-
14 1102 (9th Cir. 2009). This flexible test prevents plaintiffs from “circumvent[ing] the CDA’s
15 protections through ‘creative’ pleading.” *Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1266 (9th Cir. 2016).
16 Courts have repeatedly held that Section 230 mandates dismissal of RICO claims alleging wire
17 fraud where, as here, those claims are based on an interactive computer provider’s publishing
18 conduct. *E.g., Icon Health & Fitness, Inc. v. ConsumerAffairs.com*, 2017 WL 2728413, at *5 (D.
19 Utah June 23, 2017) (alleged removal of positive reviews); *Baldino’s Lock & Key Serv., Inc. v.*
20 *Google, Inc.*, 88 F. Supp. 3d 543, 547 (E.D. Va. 2015) (alleged publication of fraudulent ads);
21 *Manchada v. Google*, 2016 WL 6806250, at *3 (S.D.N.Y. Nov. 16, 2016) (alleged publication of
22 false content). Courts likewise have held that Section 230 bars claims based on publishing conduct
23 when styled as extortion claims, *Fyk v. Facebook, Inc.*, 2019 WL 11288576, at *1 (N.D. Cal. June
24 18, 2019) (alleged removal of user content), *aff’d*, 808 F. App’x 597 (9th Cir. 2020), and material
25 support claims, *Force*, 934 F.3d at 65 (alleged publication of content linked to terrorism).

26 Loomer seeks to hold Meta and Mr. Zuckerberg liable as publishers. She alleges that Meta
27 committed wire fraud by denying her “promised access” to Facebook, Compl. ¶ 217, and enforcing
28 Facebook’s Community Standards against her and other third-party content creators in an

1 “artific[ial]” manner. *See id.* ¶ 344. Her extortion claims similarly rest on Meta’s decisions to
2 “ban[]” her content and the content of other third parties that Meta “labeled a dangerous individual
3 or group.” *See id.* ¶ 347. And each of the allegations Loomer makes in support of her ATA and
4 Smith Act claims involve the removal (or failure to remove) third-party content. *See id.* ¶¶ 288-
5 312. Under Section 230, “publication involves reviewing, editing, and deciding whether to publish
6 or to withdraw from publication third-party content.” *Barnes*, 570 F.3d at 1102 (citing
7 *Roommates.Com*, 521 F.3d at 1171). Section 230 therefore precludes liability for removal, as well
8 as publication, of third-party content. *See, e.g., King v. Facebook, Inc.*, 2021 WL 5279823, at *11-
9 13 (N.D. Cal. Nov. 12, 2021) (account removed for violating Community Standards); *Fyk*, 2019
10 WL 11288576, at *1-2 (content removed for violating Community Standards); *Zimmerman v.*
11 *Facebook, Inc.*, 2020 WL 5877863, at *1 (N.D. Cal. Oct. 2, 2020) (access to user accounts
12 blocked); *Sikhs for Justice*, 144 F. Supp. 3d at 1095 (content removed). Though Loomer attempts
13 to plead around Section 230 for the fifth time, her claims all seek to impose liability on Meta for
14 its removal and publication of third-party content. They are thus squarely barred by Section 230.

15 **V. DISMISSAL SHOULD BE WITH PREJUDICE**

16 The Complaint should be dismissed with prejudice because none of these defects can be
17 cured by amendment. This is Loomer’s fourth lawsuit challenging Meta’s decision to ban her
18 account. *See Sephery-Fard v. Select Portfolio Servicing, Inc.*, 2015 WL 1063070, at *5 (N.D. Cal.
19 Mar. 10, 2015) (denying leave to amend because of “Plaintiff’s pattern of filing serial lawsuits
20 arising out of the same nucleus of facts and with respect to the same Property”). As explained
21 *supra* Part I, her claims are barred by res judicata. Her suit thus must be dismissed with prejudice.
22 *See Factory Direct Wholesale, LLC v. iTouchless Housewares & Prods, Inc.*, 411 F. Supp. 3d 905,
23 918 (N.D. Cal. 2019). But even beyond that, before filing this motion, Meta’s counsel sent
24 Loomer’s counsel a letter identifying the defects with her claims and urging her to drop this lawsuit
25 or, if she believed these defects could be cured, to propose amendments that would address them.
26 *See* Barnet Decl. Ex. 1. Loomer nonetheless chose to proceed with this defective Complaint. Given
27 that choice, and because Section 230 is meant to protect against “protracted legal battles,”
28 *Roommates*, 521 F.3d at 1175, dismissal should be with prejudice.

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Dated: August 8, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2022, I electronically filed the above document with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to all registered counsel.

Dated: August 8, 2022

By: /s/ Sonal N. Mehta
Sonal N. Mehta

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