

The Honorable John H. Chun

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHARLES HAYWOOD,

Plaintiff,

v.

AMAZON.COM, INC. and its affiliate
AMAZON.COM SERVICES LLC,

Defendants.

No. 2:22-cv-01094-JHC

**MOTION TO DISMISS
COMPLAINT**

NOTE ON MOTION CALENDAR:
October 7, 2022

ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

1
2 Plaintiff Charles Haywood is an internet user, online blogger, and self-described “radical”
3 who serially violated Defendant Amazon’s Conditions of Use and Community Guidelines by
4 posting abusive, xenophobic, and derogatory book reviews in Amazon’s online store. Despite
5 having lost an earlier arbitration challenging prior actions Amazon took to remove his abusive
6 reviews and temporarily revoke his posting privileges, Haywood brings this essentially identical
7 suit seeking to hold Amazon liable for again enforcing its Conditions and revoking his publishing
8 privileges. Though Haywood repackages his allegations into claims for (i) violation of the
9 Washington Consumer Protection Act, RCW § 19.86.010 *et seq.* (“CPA”), (ii) breach of contract,
10 (iii) breach of the implied duty of good faith, and (iv) declaratory judgment, the substance is the
11 same: Haywood seeks an order obligating Amazon, a private actor, to host third-party speech that
12 violates Amazon’s explicit and completely discretionary content moderation policies, which
13 Haywood admits he accepted when he joined Amazon’s community.

14 Haywood’s claims fail as a matter of law several times over. **First**, Section 230(c)(1) of the
15 Communications Decency Act, 47 U.S.C. § 230(c)(1), preempts Haywood’s non-contract claims
16 for violation of the CPA, breach of the implied duty of good faith, and declaratory judgment. Each
17 of these claims seeks to impose liability on Amazon, an interactive computer service, based on
18 publication decisions Amazon made to remove, edit, and limit the third-party content that appears
19 in its online store. Because Section 230 squarely bars these claims, they should be dismissed with
20 prejudice. **Second**, and for essentially the same reasons, the non-contract claims are also barred by
21 the First Amendment, which protects Amazon’s editorial decisions about what third-party content
22 to (or not to) publish. **Third**, in addition to being barred by Section 230(c)(1) and the First
23 Amendment, Haywood’s non-contract claims independently fail on their merits. With respect to
24 the CPA claim, Haywood does not allege facts sufficient to show that Amazon’s moderation of his
25 abusive posts qualifies as an “unfair or deceptive act or practice” under the CPA, much less one
26 that “impacts the public interest” and injured Haywood’s “business or property” interests. The
27 implied duty claim fails because it, like the contract claim, seeks to enforce an invented obligation

1 at odds with explicit provisions of the Conditions and the Guidelines, which grant Amazon sole
 2 discretion to moderate user content. *Fourth*, Haywood’s breach of contract claim fails because the
 3 alleged contract duty—requiring Amazon “to allow him to post reviews if he complied with
 4 Amazon’s Conditions of Use and its Community Guidelines,” and to make content moderation
 5 decisions “in good faith,” Compl. ¶¶ 55-56—*does not exist*. In fact, both the Conditions and the
 6 Guidelines expressly disclaim any such duty and grant Amazon “sole” and complete discretion to
 7 enforce its content moderation rules without qualification.

8 No law requires Amazon, or any private publisher, to supply Haywood with a platform to
 9 disseminate his views. To the contrary, just as Haywood is free to publish what he wants on his
 10 own website, the law protects Amazon’s right to control the third-party content it publishes, and to
 11 enforce its content moderation policies that Haywood concedes he accepted. All Haywood’s claims
 12 should therefore be dismissed with prejudice.

13 II. FACTUAL BACKGROUND

14 A. The Parties

15 Plaintiff Charles Haywood is a citizen of Indiana and “former lawyer” whose “preferred
 16 form of exposition” is Amazon book reviews. Compl. ¶ 24. He also publishes an “online
 17 magazine” available at www.theworthyhouse.com, where he blogs in opposition to “what he
 18 regards as ‘politically correct,’ ‘woke,’ or ‘identity-based’ ideologies,” and in support of what he
 19 calls “conservative,” “radical,” and “anarchist” viewpoints. *Id.* ¶¶ 24-26. *See, e.g.*, C. Haywood,
 20 “On the January 2021 Electoral Justice Protest,” *TheWorthyHouse.com* (March 23, 2021)
 21 (expressing support for the individuals who occupied the U.S. Capitol on January 6, 2021 and
 22 opining that his political opponents “are afraid, and they should be, and we should give them good
 23 reason to be yet more afraid”) (available at <https://tinyurl.com/mvwcj4rw>).¹

24 Amazon operates an online store that sells books, among many other products. Compl. ¶ 27.
 25 As part of its bookstore, Amazon permits users to post book reviews in accordance with its
 26

27 ¹ Because Haywood cites his blog (Compl. ¶¶ 24-26), its contents are incorporated by reference into his allegations. *See United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

1 Conditions of Use and Community Guidelines, both of which a user must accept to post reviews in
 2 Amazon’s store. *Id.* ¶¶ 27, 34. Any review a user posts must comply with those Conditions and
 3 Guidelines. *Id.* Under those agreements, Amazon retains “sole discretion” to remove reviews and
 4 users that violate the Conditions or the Guidelines. *Id.*, Ex. A (Dkt. No. 1-1).² And it is undisputed
 5 that “Amazon is....under no obligation to offer its users the ability to post reviews.” Compl. ¶ 33.

6 **B. Amazon’s Community Guidelines and Conditions of Use**

7 To make purchases or post reviews in Amazon’s store, a user must agree to Amazon’s terms
 8 of service, including its Community Guidelines and Conditions of Use. *See id.* ¶ 34; *see also id.*,
 9 Ex. A. Haywood repeatedly acknowledges—and indeed predicates his breach of contract claim
 10 upon—agreeing to and accepting those Conditions and Guidelines. *See, e.g.*, Compl. ¶¶ 34, 52-62.

11 Amazon’s Conditions provide Amazon “the right to refuse service, terminate accounts,
 12 terminate your rights to use Amazon Services, remove or edit content, or cancel orders in *its sole*
 13 *discretion.*” *Id.*, Ex. A (emphasis added). The Conditions further forbid users from publishing
 14 reviews that Amazon, exercising its sole discretion, determines to be “illegal, obscene, threatening,
 15 defamatory, invasive of privacy, infringing of intellectual property rights (including publicity
 16 rights), or otherwise injurious to third parties or objectionable.” *Id.* The Conditions thus specifically
 17 reserve for Amazon the unqualified right to “remove any activity or content” from its store. *Id.*

18 In addition to Amazon’s Conditions, Amazon’s Community Guidelines also govern a user’s
 19 conduct in its online store, including a user’s “[i]nteractions with other community members and
 20 Amazon” itself. Compl., Ex. B (Dkt. No. 1-2).³ While the Guidelines allow for the “respectful”
 21 questioning of “others’ beliefs and expertise,” they bar “[p]rofanity, obscenities, or name-calling;
 22 [h]arassment or threats; [a]ttacks on people you disagree with; and [l]ibel, defamation, or
 23 inflammatory content.” *Id.* The Guidelines also prohibit hate speech and forbid expressions of
 24

25 ² Amazon’s Conditions of Use are publicly available here:

26 <https://www.amazon.com/gp/help/customer/display.html?nodeId=GLSBYFE9MGKKQXXM>

27 ³ Amazon’s Community Guidelines are publicly available here:

<https://www.amazon.com/gp/help/customer/display.html?nodeId=GLHXEX85MENUMUE4XF>

1 hatred for people based on, among other things, race, ethnicity, nationality, or age. *Id.* The
 2 Guidelines state that “if someone violates the guidelines” Amazon has the right and complete
 3 discretion to “remove their content,” “[l]imit their ability to use community features,” “limit” a
 4 user’s “ability to submit reviews,” and even “[s]uspend or terminate their account.” *Id.*

5 **C. Haywood Repeatedly Violates Amazon’s Conditions and Guidelines**

6 Haywood has repeatedly published reviews that Amazon has found to violate its Conditions
 7 and Guidelines. Compl. ¶¶ 36, 37. In October 2019, for example, Haywood posted reviews that
 8 impugned the character of two authors and used a derogatory term to describe a President of the
 9 United States. *Id.* ¶ 37. In response, Amazon informed Haywood that his reviews violated
 10 Amazon’s Guidelines, and subsequently removed Haywood’s reviews and revoked his ability to
 11 publish further reviews to the Amazon store. *Id.* ¶¶ 35-37.

12 In a bid to restore his reviewing privileges, Haywood commenced arbitration proceedings
 13 against Amazon in November 2019, claiming that Amazon’s revocation of his reviewing privileges
 14 and removal of his reviews breached the implied duty of good faith and fair dealing. *Id.* ¶ 36.
 15 During arbitration, Amazon explained that Haywood’s reviews had been flagged because they
 16 violated the Community Guidelines’ prohibition on “name-calling or attack[ing] people based on
 17 whether you agree with them” and because Haywood failed to express his views in a “respectful
 18 and non-threatening manner.” *Id.* ¶ 38.

19 On July 31, 2020, the arbitrator ruled in Amazon’s favor, dismissing all Haywood’s claims.
 20 *Id.* ¶ 39. The arbitrator’s order hinged on his determination that the Conditions granted Amazon
 21 “sole discretion” to “remove customer content or terminate customer access to certain features on
 22 Amazon.com, including posting reviews.” Sieff Decl., Ex. A at 1-2.⁴ The arbitrator found the
 23 Guidelines set parameters for participating in the Amazon community, including maintaining
 24 respect, refraining from name-calling and personal attacks, and permitted Amazon to “remove
 25 content, restrict access, and terminate accounts for violating any of these rules.” *Id.* at 2.

26 ⁴ Because Haywood cites and alleges facts from the prior arbitration decision (Compl. ¶¶ 35-39), it
 27 too is incorporated by reference into his allegations and may be considered with this motion to
 dismiss. *See Ritchie*, 342 F.3d at 908 (considering materials incorporated by reference).

1 The arbitrator rejected Haywood’s argument that Amazon breached any implied duty since
2 the contract imposed no obligation on Amazon to inform Haywood of “the offending reviews,
3 disclose its internal procedures for flagging violations, or provide sufficient opportunity to cure or
4 appeal its decision.” *See* Sieff Decl., Ex. A at 3. To the contrary, the arbitrator ruled the contract
5 conferred “sole discretion” on Amazon to determine what content was published on its website and
6 whether a “customer had the *privilege* of posting reviews.” *Id.* at 3 (emphasis added). In short, the
7 arbitrator found Amazon had an “express contractual right to remove content in violation of its
8 COU and Guidelines.” *Id.* at 4. As a result, Haywood’s claims failed as a matter of law. *Id.*

9 Amazon subsequently reinstated Haywood’s reviewing privileges, subject to his promise to
10 comply with Amazon’s Conditions and Guidelines, as determined by Amazon. *See* Compl. ¶ 39.

11 **D. Haywood Again Violates Amazon’s Conditions and Guidelines**

12 In a review posted on January 16, 2022, Haywood wrote that “many Millennials are
13 woketards” (a portmanteau of “woke” and “retard”). *Id.* ¶¶ 2-3, 46. On January 24, 2022, Amazon
14 warned Haywood that “[o]ne or more of your posts were found to be outside our guidelines” and
15 advised him that additional violations could result in the revocation of his ability to post reviews.
16 *Id.* ¶ 41. Despite that warning, Haywood proceeded to publish book reviews that Amazon found to
17 violate its Guidelines. *Id.* ¶¶ 2-3, 46. For instance, one day after receiving the warning from
18 Amazon, on January 25, 2022, Haywood posted a review referring to COVID-19 as the “Wuhan
19 Plague,” a xenophobic label. *Id.* Amazon removed both of these offending reviews and, given his
20 repeated violations, revoked Haywood’s reviewing privileges on February 1, 2022. *Id.*

21 **E. The Complaint**

22 Haywood filed this lawsuit on August 4, 2022. *See* Compl. By removing his reviews and
23 revoking his review privileges, Haywood alleges that Amazon violated the Washington Consumer
24 Protection Act, RCW § 19.86.010 *et seq.*, Compl. ¶¶ 63-67, breached (non-existent) contractual
25 obligations, *id.* ¶¶ 52-62, as well as an asserted implied duty to exercise its unqualified discretion
26 set forth in the Conditions and Guidelines “in good faith.” *Id.* ¶¶ 57-58. The Complaint also seeks
27 a “declaratory judgment” that Amazon’s actions are not protected by Section 230 since they

1 purportedly were not undertaken “in good faith.” *Id.* ¶¶ 68-70. In addition to damages and
 2 declaratory relief, he seeks an injunction requiring Amazon to reinstate his reviewing privileges,
 3 restore his deleted reviews, and refrain from “viewpoint discrimination.” *Id.* at Prayer. Haywood
 4 thus demands that Amazon be required to publish his speech, including his abusive, xenophobic,
 5 and derogatory reviews, and be precluded from moderating the content published in its online store.

6 III. LEGAL STANDARD

7 A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) must be granted
 8 when plaintiff fails to allege “a cognizable legal theory” that, if proven, would provide grounds that
 9 permit relief. *Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011) (citation
 10 omitted). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires
 11 more than labels and conclusions, and a formulaic recitation of the elements of a cause of action
 12 will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). “Threadbare
 13 recitals of the elements of a cause of action, supported by mere conclusory statements,” are not
 14 entitled to a presumption of truth. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Any “legal
 15 conclusions” asserted in a complaint “must be supported by factual allegations” that suffice to “state
 16 a claim to relief that is plausible on its face.” *Id.* at 678-79 (citation omitted).

17 IV. ARGUMENT

18 Each of Haywood’s claims is either completely preempted by Section 230 and the First
 19 Amendment, or predicated on non-existent legal duties expressly disclaimed by parties’ written
 20 agreements. These core legal defects are incurable, and they require dismissal with prejudice.

21 A. The Non-Contract Claims Suffer Incurable Legal Defects

22 1. Section 230 Immunizes Amazon From The Non-Contract Claims

23 Enacted to safeguard First Amendment protections for online publishers, Section 230(c)(1)
 24 immunizes internet content hosts from claims that seek to hold them liable for exercising discretion
 25 to publish, or not to publish, an internet user’s content on websites they operate. *Barnes v. Yahoo!,*
 26 *Inc.*, 570 F.3d 1096, 1105 (9th Cir. 2009). The statute establishes an immunity from suit that must
 27 be applied at the pleading stage to “protect websites not merely from ultimate liability, but [also]

1 from having to fight costly and protracted legal battles.” *Fair Hous. Council of San Fernando*
 2 *Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1175 (9th Cir. 2008) (en banc); *see also Nemet*
 3 *Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 254-55 (4th Cir. 2009) (the “immunity
 4 is an *immunity from suit* rather than a mere defense to liability”) (citation omitted). Thus “[w]hen
 5 a plaintiff cannot allege enough facts to overcome Section 230 immunity, a plaintiff’s claims should
 6 be dismissed.” *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1097 (9th Cir. 2019).

7 The test is whether (1) the defendant provides an “interactive computer service” and (2) the
 8 plaintiff seeks to treat the defendant “as a publisher or speaker” (3) “of information provided by
 9 another information content provider.” *Id.* (quoting *Barnes*, 570 F.3d at 1100-01). These elements
 10 must “be construed broadly in favor of immunity.” *Force v. Facebook, Inc.*, 934 F.3d 53, 64 (2d
 11 Cir. 2019); *see also M.L. v. craigslist, Inc.*, 2022 WL 1210830, at *14 n.14 (W.D. Wash. Apr. 25,
 12 2022) (quoting same and string-citing cases). And any “close cases” that arise “must be resolved
 13 in favor of immunity.” *Roommates.com*, 521 F.3d at 1174.

14 The test is easily met here. Section 230(c)(1) bars Haywood’s three non-contract claims for
 15 violation of the CPA, breach of an implied duty of good faith, and declaratory judgment.⁵ There is
 16 no dispute under the first element that Amazon’s store is an “interactive computer service” to which
 17 Section 230 applies. *See, e.g., Joseph v. Amazon.com, Inc.*, 46 F. Supp. 3d 1095, 1105 (W.D. Wash.
 18 2014) (“Amazon constitutes an ‘interactive service provider’” under Section 230); *accord Corbis*
 19 *Corp. v. Amazon.com, Inc.*, 351 F. Supp. 2d 1090, 1118 (W.D. Wash. 2004) (same). Nor is there
 20 any dispute under the third element that the liability Haywood seeks to impose on Amazon derives
 21

22 ⁵ Under Washington law, a claim for breach of the implied duty of good faith sounds in tort. *See*
 23 *Pruss v. Bank of Am. NA*, 2013 WL 5913431, at *5 (W.D. Wash. Nov. 1, 2013) (“breach of the duty
 24 of good faith and fair dealing claims are subject to a three year statute of limitations” for torts); *Ill.*
 25 *Tool Works, Inc. v. Seattle Safety, LLC*, 2010 WL 4668447, at *8 (W.D. Wash. Nov. 8, 2010)
 26 (implied duty of good faith is a tort claim); *accord Darland v. Snoqualmie Pass Util. Dist.*, 9 Wn.
 27 App. 2d 1063 (2019) (unpublished) (“claims for the breach of good faith and fair dealing, a tort,
 must be brought within three years”). Section 230(c)(1) applies to such tort claims. *See, e.g., Fed.*
Agency of News LLC v. Facebook, Inc., 432 F. Supp. 3d 1107, 1120-21 (N.D. Cal. 2020) (“Section
 230 immunizes Facebook from Plaintiff’s non-constitutional federal and state causes of action”
 including “causes of action for breach of the implied covenant of good faith and fair dealing”).

1 from Amazon’s actions to remove and block third-party, user-generated information at its discretion
2 (i.e., Haywood’s reviews and ability to post reviews in the future). *See, e.g.*, Compl. ¶¶ 2-3, 5, 55-
3 56, 63, 69. The only question is whether, under the second element, Haywood’s non-contract
4 claims seek to impose liability on Amazon in its capacity as a publisher of Haywood’s removed
5 and blocked content.

6 They do. A claim implicates a defendant’s role as a publisher if it involves the defendant’s
7 conduct “reviewing, editing, *and deciding whether to publish or to withdraw from publication* third-
8 party content.” *Barnes*, 570 F.3d at 1102 (emphasis added). “[A]ny activity,” in other words, “that
9 can be boiled down to deciding whether to exclude material that third parties seek to post online is
10 *perforce immune* under section 230.” *Roommates.com*, 521 F.3d at 1170-71 (emphasis added).
11 “[W]hat matters” is the nature of “the duty that the plaintiff alleges the defendant violated[.]”
12 *Barnes*, 570 F.3d at 1102. If the duty is one that involves the exercise of editorial functions such
13 as “deciding whether to publish, withdraw, postpone or alter content,” then the plaintiff’s claim
14 seeks to treat the defendant as a publisher and is subject to Section 230. *Id.* (quoting *Zeran v. Am.*
15 *Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)).

16 Haywood’s allegations unquestionably implicate Amazon’s role as a publisher, as the duty
17 he seeks to impose is one that requires and/or limits Amazon’s discretion to remove or block user-
18 generated, third-party content from its website. Haywood explains that he brought this action to
19 “requir[e] Amazon to restore and maintain his reviews and review privileges,” to “recover
20 damages” suffered as a result of the loss of those privileges, and to “desist from further de-
21 platforming” him. Compl. ¶ 14. And Haywood’s Prayer for Relief confirms as much, requesting
22 an injunction “to restore Mr. Haywood’s user privileges and deleted reviews,” as well as to prevent
23 Amazon from engaging in “unstated or undisclosed viewpoint discrimination” in its selection of
24 material to publish or exclude from publication in its store. *See* Compl., Prayer for Relief ¶ C.

25 These allegations are no different from those raised and rejected in similar so-called
26 “deplatforming” and account removal cases, in which the Ninth Circuit and lower courts have
27 consistently held that “decisions to delete” a plaintiff’s “profile” are immunized by Section

1 230(c)(1). *Riggs v. MySpace, Inc.*, 444 F. App'x 986, 987 (9th Cir. 2011); e.g., *Atkinson v. Meta*
2 *Platforms, Inc.*, 2021 WL 5447022, at *2 (9th Cir. Nov. 22, 2021) (Section 230(c)(1) barred state
3 law claims challenging Meta's removal of plaintiff's posts); *Sikhs for Justice, Inc. v. Facebook,*
4 *Inc.*, 697 F. App'x 526, 526 (9th Cir. 2017) (Section 230(c)(1) immunized "blocking" plaintiff's
5 "online content" and removing its account); *Fed. Agency of News LLC v. Facebook, Inc.*, 432 F.
6 Supp. 3d 1107, 1116-21 (N.D. Cal. 2020) (Koh, J.) (same); *Zimmerman v. Facebook, Inc.*, 2020
7 WL 5877863, at *1 (N.D. Cal. Oct. 2, 2020) (same); *Ebeid v. Facebook, Inc.*, 2019 WL 2059662,
8 at *5 (N.D. Cal. May 9, 2019) (same); see generally E. Goldman & J. Miers, *Online Account*
9 *Terminations/Content Removals and the Benefits of Internet Services Enforcing Their House Rules,*
10 1 J. OF FREE SPEECH L. 191, 217-21 (2021) (listing 62 cases through March 2021 in which platforms
11 defeated account removal actions, usually at the pleading stage, typically under Section 230).

12 Even if Haywood's non-contract allegations were construed to seek a duty requiring
13 Amazon to *explain* its publication decisions and show they were *made in good faith*, see Compl.
14 ¶¶ 12, 47-48, 56-58, 68-70, the claims would still seek to treat Amazon as a publisher and fall within
15 the ambit of Section 230(c)(1)'s broad immunity. See, e.g., *Sikhs for Justice "SFJ", Inc. v.*
16 *Facebook, Inc.*, 144 F. Supp. 3d 1088, 1095-96 (N.D. Cal. 2015) (Koh, J.) (Section 230 barred duty
17 to provide "an explanation" for content moderation decisions), *aff'd sub nom. Sikhs for Justice, Inc.*
18 *v. Facebook, Inc.*, 697 F. App'x 526 (9th Cir. 2017). This is because the reasoning behind
19 Amazon's publishing decisions are irrelevant to the application of Section 230(c)(1). Importantly,
20 "nothing in § 230(c)(1) turns on the alleged motives underlying the editorial decisions of the
21 provider of an interactive computer service." *Fyk v. Facebook, Inc.*, 808 F. App'x 597, 598 (9th
22 Cir. 2020), *cert. denied*, 141 S. Ct. 1067 (2021); see also, e.g., *Levitt v. Yelp! Inc.*, 2011 WL
23 5079526, at *7 (N.D. Cal. Oct. 26, 2011) (explaining that "[section] 230(c)(1) contains no explicit
24 exception for impermissible editorial motive"), *aff'd*, 765 F.3d 1123 (9th Cir. 2014); *Doe ex rel.*
25 *Roe v. Backpage.com, LLC*, 104 F. Supp. 3d 149, 161 (D. Mass. 2015) (quoting same), *aff'd*, 817
26 F.3d 12 (1st Cir. 2016); *Icon Health & Fitness, Inc. v. Consumer Affairs.com*, 2017 WL 2728413,
27 at *3 (D. Utah June 23, 2017) (same).

1 The distinction sets the immunity in Section 230(c)(1) apart from the one provided by
2 Section 230(c)(2), the latter of which “provides an *additional shield* from liability, *but only for any*
3 *action voluntarily taken in good faith to restrict*” the dissemination of “obscene” or “otherwise
4 objectionable” content. *Barnes*, 570 F.3d at 1105 (emphasis added) (internal marks omitted)
5 (quoting 47 U.S.C. § 230(c)(2)). There is no such “good faith” requirement under subsection (c)(1),
6 which “by itself, shields from liability *all publication decisions*, whether to edit, to remove, or to
7 post, with respect to content generated entirely by third parties,” for any reason. *Id.* (emphasis
8 added). Tellingly, Haywood neglects to reference Section 230(c)(1) in his rendition of Section
9 230’s protections, *see* Compl. ¶ 9 (citing only 47 U.S.C. § 230(a)(3), (b)(1), and (c)(2)(A)), thus
10 ignoring subsection (c)(1)’s independent bar, and proceeding (most explicitly in the declaratory
11 judgment claim) as if Section 230’s immunity were limited to subsection (c)(2). *Id.* ¶¶ 68-70.

12 But Section 230(c)(1) does exist and squarely bars Haywood’s non-contract claims. The
13 Court should therefore dismiss those claims with prejudice.

14 2. The First Amendment Bars The Non-Contract Claims

15 The First Amendment protects a publisher’s decisions to select, arrange, and promote third-
16 party content. *See Miami Herald Publ’g Co. v. Tornillo*, 418 U.S. 241, 258 (1974); *see also Bursey*
17 *v. United States*, 466 F.2d 1059, 1087 (9th Cir. 1972) (First Amendment protects editorial decisions
18 including “what should be published”). These protections apply without “qualif[ication]” to online
19 speech and content moderation practices. *Reno v. ACLU*, 521 U.S. 844, 870, 874 (1997).
20 Haywood’s non-contract claims are barred by the First Amendment because they seek to hold
21 Amazon liable for making those protected publishing decisions.

22 As the Eleventh Circuit recently recognized in *NetChoice, LLC v. Att’y Gen., Fla.*, 34 F.4th
23 1196 (11th Cir. 2022), an internet communication service’s content moderation policies are
24 “analogous to the editorial judgments” made by organizations or entities that host third-party
25 speech, such as “parade organizers and cable operators,” as they center upon curating speech
26 provided by others. *Id.* at 1213 (citing *Tornillo*, 418 U.S. at 258, *Turner Broad. Sys., Inc. v. F.C.C.*,
27 512 U.S. 622, 636 (1994), and *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S.

1 557, 570 (1995)). Decisions about “what content to include, exclude, moderate, filter, label, restrict,
2 or promote” are accordingly fully “protected by the First Amendment.” *O’Handley v. Padilla*, 579
3 F. Supp. 3d 1163, 1186-87 (N.D. Cal. 2022) (citing cases).

4 Haywood’s non-contract claims seek to hold Amazon liable for making judgments as to
5 what types of third-party content it will allow in its online store. Compl. ¶¶ 2-3, 5, 55-56, 63, 69.
6 And those judgments form the basis of Haywood’s claimed non-contract injuries. *Id.* ¶¶ 61, 66, 70.
7 His claims are thus also barred by the First Amendment.

8 **3. The Non-Contract Claims Also Fail on Their Merits**

9 Though the Court need not address the non-contract claims on their merits since they are
10 barred both by Section 230(c)(1) and the First Amendment, *see supra* §§ IV.A.1-2, Haywood also
11 fails to allege essential elements of these claims, independently requiring their dismissal.

12 **a. Haywood Does Not and Cannot Allege a CPA Claim**

13 To state a CPA claim, Haywood must establish (1) an unfair or deceptive act or practice,
14 (2) occurring in trade or commerce, (3) impacting the public interest, (4) injury to the plaintiff’s
15 business or property, and (5) causation. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins.*
16 *Co.*, 105 Wn. 2d 778, 780 (1986). Failure to satisfy any one of these elements is “fatal” to a
17 plaintiff’s CPA claim. *Id.* at 793. Haywood fails under the first, third, and fourth elements.

18 **First**, Haywood does not (and cannot) allege an actionable “unfair or deceptive practice.”
19 An act is unfair or deceptive if it involves “a representation, omission or practice that is likely to
20 mislead a reasonable consumer.” *Young v. Toyota Motor Sales, U.S.A.*, 196 Wn. 2d 310, 317 (2020)
21 (quotation omitted). Whether a given act qualifies is a question of law for the Court. *Id.* Here,
22 Haywood cannot show an “unfair or deceptive practice” because his CPA claim rests on conduct—
23 the removal of Haywood’s reviews and the termination of his account—that Amazon’s Conditions
24 and Guidelines explicitly allow and which Amazon fully and explicitly disclosed to Haywood in
25 advance. *See* Compl. ¶ 52 & Exs. A & B. Such conduct, authorized by an expressly disclosed
26 contract, cannot form an actionable unfair or deceptive practice as a matter of law. *See, e.g.*,
27 *Lowden v. T-Mobile USA, Inc.*, 2009 WL 537787, at *2 (W.D. Wash. Feb. 18, 2019) (dismissing

1 CPA claim because plaintiff's contract "adequately disclosed" and permitted the alleged deceptive
2 practices), *aff'd*, 378 F. App'x 693 (9th Cir. 2010); *Smale v. Cellco P'ship*, 547 F. Supp. 2d 1181,
3 1186, 1188-89 (W.D. Wash. 2008) (dismissing CPA claim because Verizon's contract permitted
4 the alleged deceptive act, explaining "any reasonable consumer reading the Agreement would
5 realize that Verizon reserved the right to assess surcharges"); *see also Robinson v. Avis Rent A Car*
6 *Sys., Inc.*, 106 Wn. App. 104, 119 (2001) (holding "no unfair or deceptive act here because the car
7 rental companies disclosed the concession fee to the consumers" in advance)

8 **Second**, Haywood cannot satisfy the "public interest" element because the alleged "breach
9 of a private contract affecting no one but the parties to the contract ... is not an act or practice
10 affecting the public interest." *Lightfoot v. MacDonald*, 86 Wn. 2d 331, 334 (1976); *see also*
11 *Quinteros v. InnoGames*, 2022 WL 898560, at *6 (W.D. Wash. Mar. 28, 2022) (same). A plaintiff
12 must allege facts showing others "have been or will be injured in exactly the same fashion" to
13 transform an exclusively private dispute into one impacting the public interest. *Hangman Ridge*,
14 105 Wn. 2d at 790. This is because conduct is "[o]nly" "actionable" if it "ha[s] the capacity to
15 deceive a *substantial portion* of the public." *Goodyear Tire & Rubber Co. v. Whiteman Tire, Inc.*,
16 86 Wn. App. 732, 744 (1997) (emphasis original). Haywood alleges no facts, claims no injury, and
17 seeks no remedy for any conduct that reaches beyond Amazon's specific treatment of his personal
18 account and the reviews he posted. *See* Compl. ¶ 14 & Prayer for Relief. Nor has Haywood alleged
19 any factual "pattern or generalized course of conduct" sufficient to generate an inference of a "real
20 and substantial potential for repetition." *Segal Co. (E. States) v. Amazon.com*, 280 F. Supp. 2d
21 1229, 1234 (W.D. Wash. 2003) (citation omitted); *cf.* Compl. ¶¶ 5, 6, 7, 63 (merely incanting the
22 words "pattern and practice"). This too requires dismissal. *See, e.g., Evergreen Moneysource*
23 *Mortg. Co. v. Shannon*, 167 Wn. App. 242, 261 (2012) (dismissing CPA claim because plaintiff
24 failed to allege facts establishing public interest impact); *Kelley-Ross & Assocs., Inc. v. Express*
25 *Scripts, Inc.*, 2022 WL 1908917, at *6 (W.D. Wash. June 3, 2022) (same where conduct that
26 allegedly violated the CPA was entirely coextensive with alleged breach of contract); *Jet Parts*
27 *Eng'g, Inc. v. Quest Aviation Supply, Inc.*, 2015 WL 4523497, at *4 (W.D. Wash. July 27, 2015)

1 (same, where “[t]he circumstances alleged [in the complaint] fail to indicate” the challenged
2 “conduct extended in any way beyond the two parties to” an agreement).

3 **Third**, Haywood fails to allege a cognizable injury to his business or property. “Business
4 or property” under the CPA “denote[s] a commercial venture or enterprise.” *Ambach v. French*,
5 167 Wn. 2d 167, 171-72 (2009) (citations omitted). “Personal injury damages,” including
6 consequential damages for “lost wages and earning capacity” suffered as a result of a fundamentally
7 personal injury, do not suffice. *Id.* at 173-74 (citations omitted); *accord Ass’n of Wash. Pub. Hosp.*
8 *Dists. v. Philip Morris Inc.*, 241 F.3d 696, 705 (9th Cir. 2001) (hospitals’ losses from paying for
9 services for uninsured smokers did not constitute injury to business or property cognizable under
10 CPA since underlying injury to smokers was personal). And while “damage to professional
11 reputation” may qualify, *Wash. State Physicians Ins. Exch. & Ass’n v. Fisons Corp.*, 122 Wn. 2d
12 299, 316 (1993), generalized personal reputational injuries disconnected from the “entrepreneurial
13 aspects” of a professional or business reputation do not. *Stevens v. Hyde Athletic Indus., Inc.*, 54
14 Wn. App. 366, 369 (1989). Here, Haywood alleges no facts connecting the removal of his reviews
15 and revocation of his reviewing privileges to any kind of economic injury to business or property.
16 Instead, he asserts vague and conclusory injuries to his “reputation” and “standing,” and from the
17 loss of his “ability to engage in free expression” on Amazon’s website. Compl. ¶ 66. But these
18 alleged injuries, based in purported “inconvenience” and limits on the ability to “pursue personal
19 activities,” do not satisfy the stringent test for “business or property” the Washington legislature
20 adopted. *Bigelow v. Nw. Tr. Servs.*, 2016 WL 4363199, at *4 (W.D. Wash. Aug. 16, 2016) (entering
21 judgment against plaintiff’s CPA claim). The CPA claim must be dismissed for this reason too.

22 **b. Haywood’s Breach of Implied Duty Claim Fails Because It**
23 **Seeks to Impose a New Duty Disclaimed by Contract**

24 Washington law requires parties to a contract to “perform in good faith the obligations
25 imposed by their agreement.” *Badgett v. Sec. State Bank*, 116 Wn. 2d 563, 569 (1991). But the
26 duty is not “free-floating.” *Id.* at 570. It does not “expand” or “inject substantive terms into the
27 parties’ contract” that do not exist. *Id.* at 569, 570 (citations omitted). Nor does it “obligate a party

1 to accept a material change in the terms of its contract.” *Id.* at 569 (citations omitted). Instead, “the
2 duty” is narrow and “arises only in connection with terms agreed to by the parties” and “exists only
3 in relation to performance of a specific contract term.” *Id.* at 570 (citations omitted). “As a matter
4 of law, there cannot be a breach of the duty of good faith when a party simply stands on its rights”
5 afforded by the contract. *Id.*

6 Haywood’s breach of implied duty claim seeks to generate through the implied duty of good
7 faith that which the Conditions and Guidelines expressly disclaim: a “good faith” limitation on
8 Amazon’s unqualified discretion to moderate user-generated reviews in its online store. *Compare*
9 Compl. ¶¶ 57-58 (seeking to impose this limitation) with Pls. Ex. A & B (expressly disclaiming it).
10 But that’s not how this works. The duty of good faith *complements* a specific existing contractual
11 obligation; it does not displace or modify it. *Badgett*, 116 Wn. 2d at 569; *see, e.g., Hard 2 Find*
12 *Accessories, Inc. v. Amazon.com, Inc.*, 58 F. Supp. 3d 1166, 1173 (W.D. Wash. 2014) (Martinez,
13 J.) (dismissing seller’s implied duty claim against Amazon because it conflicted with contractual
14 obligations), *aff’d*, 691 F. App’x 406 (9th Cir. 2017). Thus, “no implied duty of good faith and fair
15 dealing exists where [as here] a party has unilateral authority to do or not do something under a
16 contract.” *New Vision Programs Inc. v. State, Dep’t of Soc. & Health Servs.*, 193 Wn. App. 1011
17 (2016) (unpublished) (discussing *Johnson v. Yousoofian*, 84 Wn. App. 755, 762 (1996), *Mayer v.*
18 *Pierce Cty. Med. Bureau, Inc.*, 80 Wn. App. 416, 421-22 (1995), and *Myers v. State*, 152 Wn. App.
19 823, 828-30 (2009)).

20 The Washington Court of Appeal’s decisions in *Johnson*, *Mayer*, and *Myers* are instructive.
21 In *Johnson*, the plaintiff filed a claim for breach of the implied duty of good faith and fair dealing,
22 asking the court to qualify his landlord’s discretionary exercise of consent to assignment. *Johnson*,
23 84 Wn. App. at 762. Rejecting that claim out of hand, the court explained that “because nothing in
24 the contract qualified” the landlord’s right to approve or deny assignment, the court could not invent
25 new qualifying conditions into the contract under the guise of an obligation to exercise its
26 unqualified discretion in good faith. *Id.* Similarly in *Mayer*, the court refused to impose a good
27 faith qualification on a contract’s 30-day cancellation term when that term granted the defendant

1 an absolute right to cancel within 30 days. *Mayer*, 80 Wn. App. at 421-22. So too in *Myers*, where
 2 the court similarly refused to qualify a termination clause that permitted the defendant to terminate
 3 at its convenience. *Myers*, 152 Wn. App. at 828-30. Each of these cases reflects a specific
 4 application of the rule stated by the Washington Supreme Court in *Badgett*: a defendant cannot
 5 violate the implied duty of good faith by simply asserting “its rights” provided by a contract.

6 Amazon’s unqualified rights to remove content and terminate user privileges under its
 7 agreement with Haywood are clear and undisputed. *See* Pl.’s Exs. A & B. Haywood cannot invoke
 8 the implied duty of good faith to override those terms and circumscribe Amazon’s rights in response
 9 to Amazon’s decision to act on and assert them. His claim for breach of that duty, like those in the
 10 cases cited above, must be dismissed.⁶

11 **B. The Breach of Contract Claim Rests on a Non-Existent Legal Duty**

12 A plaintiff alleging breach of contract must, as a first step, allege the existence of a duty
 13 actually imposed by the contract, and breach of that contract duty. *See, e.g., Myers*, 152 Wn. App.
 14 at 827-28. Haywood claims the Conditions and Guidelines required Amazon to “allow him to post
 15 reviews if he complied with Amazon’s Conditions of Use and its Community Guidelines,” and
 16 make to determinations “fairly and in good faith.” Compl. ¶¶ 55-56. Because neither obligation
 17 exists, the claim alleging breach of those phantom duties necessarily fails.

18 At the outset, and since the Conditions and Guidelines are completely integrated written
 19 instruments, Haywood fails to state an actionable breach of contract claim because he has not even
 20 *identified* the term(s) from those agreements supposedly generating the duties he claims. *See, e.g.,*
 21 *Denton v. Dep’t Stores Nat’l Bank*, 2011 WL 3298890, at *5 (W.D. Wash. Aug. 1, 2011)
 22 (dismissing contract claim where plaintiff failed to identify the term allegedly breached); *Ogorsolka*

23 ⁶ Haywood’s breach of the implied duty claim also fails because the question of an actionable
 24 “duty” was conclusively litigated and is precluded by the parties’ prior binding arbitration—*see*
 25 *Sieff Decl., Ex. A*—where the arbitrator rejected it. *See, e.g., Billings v. Town of Steilacoom*, 2 Wn.
 26 App. 2d 1, 16-17 (2017) (applying “[t]he general rule” that “collateral estoppel does apply to issues
 27 resolved in arbitration, if the award is not challenged as a final judgment on the merits,” and holding
 that an arbitration award was a “final judgment” to which preclusive effect applied where the parties
 agreed that arbitration was to be binding) (citing *State Farm Mut. Auto. Ins. Co. v. Avery*, 114 Wn.
 App. 299, 308 (2002)); *see also Robinson v. Hamed*, 62 Wn. App. 92, 96-97 (1991) (same).

1 v. *Residential Credit Sols., Inc.*, 2014 WL 2860742, at *6-7 (W.D. Wash. June 23, 2014) (same).
2 This is a common tactic employed by plaintiffs attempting to plead around rights Amazon reserves
3 in its agreements, and one that this District has rejected. *See, e.g., Hard 2 Find Accessories, Inc.*,
4 58 F. Supp. 3d at 1171 (granting motion to dismiss because “Plaintiff fails to identify which section
5 of the BSA is at issue and allegedly breached [which] ... is fatal to Plaintiff’s Claim”).

6 The omission is entirely predictable because the Conditions make clear that Amazon retains
7 “the right” and “sole discretion” to “terminate accounts” and “remove or edit content” submitted
8 by users like Haywood. *See* Pl.’s Ex. A. Those rights are underscored by the Guidelines, which,
9 subject to the complete discretion provided by the Conditions, state that Amazon may “remove”
10 user-generated “content,” “limit” a user’s “ability to use community features,” and even “suspend
11 or terminate” a user’s “account” if Amazon determines that a user has “violat[ed]” the Guidelines.
12 *See* Pl.’s Ex. 2. The Conditions and Guidelines thus expressly disclaim the non-existent and
13 unidentified contract duties Haywood invents, reserving to Amazon the right to remove Haywood’s
14 reviews and terminate his reviewing privileges for any reason, without qualification.

15 “Where,” as here, “the defendant’s conduct is expressly authorized by the terms of the
16 contract, there is no breach” because the duty asserted does not exist. *Talyancich v. Microsoft*
17 *Corp.*, 2012 WL 12941690, at *2 (W.D. Wash. Nov. 2, 2012). In fact, courts have specifically
18 found that terms reserving Amazon’s “sole discretion” to publish third-party content under its
19 various user agreements defeat contract claims seeking to hold Amazon liable for removing or
20 blocking a plaintiff’s content as a matter of law. *See, e.g., Hard 2 Find Accessories*, 58 F. Supp.
21 3d at 1172 (no duty to support breach of contract where the contract granted Amazon “sole
22 discretion” to take the action at issue); *Stach v. Amazon Servs. LLC*, 2015 WL 13283841, at *1
23 (C.D. Cal. Sept. 8, 2015) (“[t]he conduct Plaintiff alleges to constitute the breach . . . is something
24 that Amazon had a contractual right to do per the terms of the contract” granting it “sole discretion”
25 to “block[]” content). These cases follow others rejecting similar attempts to impose content-
26 hosting contractual duties on internet service providers whose terms expressly disclaim such
27 obligations. *See, e.g., Green v. Am. Online*, 318 F.3d 465, 472 (3d Cir. 2003) (affirming dismissal

1 of breach of contract claim because “the plain language of the Member Agreement forecloses any
2 claims that AOL breached its obligations” to host or remove content); *Young v. Facebook, Inc.*, 790
3 F. Supp. 2d 1110, 1117 (N.D. Cal. 2011) (dismissing breach of contract claim where termination
4 of the user’s account complied with contractual terms of service).

5 Haywood’s contract claim boils down to asking this Court to rewrite the Conditions and
6 Guidelines to insert new duties Haywood would like to enforce, but which do not exist in the
7 contract. But of course, courts are “not at liberty, under the guise of construing [a] contract, to
8 disregard [its] language or revise” its terms. *Seattle Prof’l Eng’g Employees Ass’n v. Boeing Co.*,
9 139 Wn. 2d 824, 833 (2000). Put simply, Haywood agreed to terms that vested Amazon with sole
10 discretion to terminate his account and remove his posts. Haywood cannot now complain that
11 Amazon “breached” those terms by doing exactly what he agreed Amazon reserved the right to do.
12 *See, e.g., Talyancich*, 2012 WL 12941690, at *2. Because no amendment could avert that reality,
13 discernable as a matter of law, the contract claim must be dismissed with prejudice as well.

14 **V. CONCLUSION**

15 For all of the above reasons, Amazon respectfully requests that the Court dismiss
16 Haywood’s claims with prejudice.

17 DATED this 15th day of September 2022.

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20 *and Amazon.com Services LLC*

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The Honorable John H. Chun

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHARLES HAYWOOD,

Plaintiff,

v.

AMAZON.COM, INC. and its affiliate
AMAZON.COM SERVICES LLC,

Defendants.

No. 2:22-cv-01094-JHC

**[PROPOSED] ORDER GRANTING
MOTION TO DISMISS COMPLAINT**

NOTE ON MOTION CALENDAR:
October 7, 2022

This matter came before the Court on Defendants Amazon.com, Inc. and Amazon.com Services LLC (collectively, “Amazon”)’s Motion to Dismiss. The Court, having considered the papers submitted in support of and opposition to this motion, any oral argument, and otherwise being fully advised, finds that the motion should be granted.

Therefore, it is hereby ordered that Amazon’s Motion to Dismiss is **GRANTED**, and the Plaintiffs’ Complaint is **DISMISSED** in its entirety with prejudice.

SO ORDERED this ____ day of _____, 2022.

John H. Chun
UNITED STATES DISTRICT JUDGE

1 Presented by:

2 DAVIS WRIGHT TREMAINE LLP
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4 and Amazon.com Services LLC

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