Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

KANE TIEN	NOT REPORTED
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s)	Attorneys Present for Defendant(s)
None	None

Proceedings: IN CHAMBERS—ORDER RE DEFENDANTS' MOTION TO DISMISS [71]

I.
INTRODUCTION

On March 11, 2015, *pro se* Plaintiff Rickey B. Reed ("Reed") filed this action against Defendants the National Football League ("the NFL"), NFL Commissioner Roger Goodell, and eight other NFL employees raising three causes of action: (1) breach of implied-in-fact contract; (2) breach of confidence; and (3) violation of California's Unfair Competition Law ("UCL"). [Doc. # 1.]

On September 24, 2015, the Court granted Defendants' motion to dismiss with leave to amend ("Sept. 24, 2015 Order"). [Doc. # 29.] On October 9, 2015, Reed filed a First Amended Complaint. [Doc. # 63.] On October 28, 2015, the Court granted Reed's motion for leave to file a Second Amended Complaint ("SAC"). [Doc. # 69.] On November 2, 2015, Reed filed the operative SAC. [Doc. # 70.]

On November 17, 2015, Defendants filed a motion to dismiss the SAC. [Doc. # 71.] Reed filed his opposition on November 30, 2015. [Doc. # 74.] On December 8, 2015, Defendants filed their reply. [Doc. # 76.]

For the reasons set forth below, the Court **GRANTS** Defendants' motion to dismiss.

II.
FACTUAL BACKGROUND

The Court incorporates herein its discussion of the factual background from its Sept. 24, 2015 Order, to the extent that the Order described the contents of Reed's exhibits. Sept. 24, 2015 Order at 1-2.

As stated in the SAC, Reed left a voicemail for Defendants in August 2013 "seeking an opportunity to send them his pitch/proposal for his television series ideas" involving an

American Idol-style reality show. SAC ¶ 5; Ex. B. Reed alleges that on August 8, 2013, Defendants "sent the plaintiff an email inviting him to send them his pitch/proposal." SAC ¶ 5. On August 9, 2013, Reed sent an email to defendant Tom Adden with the subject title, "NFL: the next generation-Reality show outline." SAC ¶ 5, Ex. B at 24. According to Reed, "defendants knew that [he] . . . was going to pitch his idea for a television series with the intention of beings [sic] compensated if his ideas and expression of those ideas were eventually used by the NFL and others for commercial again." SAC ¶ 16. Reed also alleges that "defendants knew, understood and accepted that Reed sent his pitch in confidence with the express purpose of being compensated and sharing in profits if the defendants used his ideas and expressions thereof." *Id.* ¶17.

On August 14, 2013, Reed received an email from the NFL, which explained it did not accept unsolicited materials, that the emails sent to NFL employees went "unreviewed" and were deleted, and that the NFL was not interested in Reed's ideas. SAC, Ex. D (letter from a paralegal in the "NFL Legal Department").

In October 2014, Defendants produced and aired the first episode of a television series entitled "Undrafted." SAC ¶ 7. Reed alleges that this show was "based directly on [his] pitch to the defendants . . . ." *Id.* Defendants allegedly "acted in concert to profit commercially from the plaintiffs [sic] ideas without compensating him." *Id.* ¶ 10.

III.
LEGAL STANDARD

The Court articulated the legal standard for motions to dismiss in its Sept. 24, 2015 Order and need not repeat it here.

IV.
DISCUSSION

A. Breach of Implied-In-Fact Contract

The Court incorporates herein its discussion of Reed's claim for breach of implied-in-fact contract from its prior Order. Sept. 24, 2015 Order at 3-5. In particular, the Court dismissed Reed's original complaint because he made "no allegation that he 'clearly conditioned his offer to convey the idea upon an obligation to pay for it if it is used.'" *Id.* at 5 (quoting *Desny v. Wilder*, 46 Cal. 2d 715, 739 (1956)); *see also* 4 Nimmer on Copyright § 19D.05[A][2][c] (2010) (merely alleging an "industry custom" of paying for submitted ideas if they are used is not sufficient to create an implied contract, citing *Desny*).

In his SAC, Reed alleges that he and Defendants "expressly understood that [he] submitted his idea with the understanding that, if the series was made, [he] would be compensated as a writer, executive producer, and creator of the show." SAC ¶ 24. Reed fails to allege sufficient facts, however, to plausibly support this conclusory allegation.

In fact, Reed's SAC includes the same exhibits that he attached to his original complaint. SAC, Ex. A-D. The Court already found that nothing in these exhibits, or in his exchanges with Defendants, suggest that Reed clearly conditioned his offer to convey his television show idea upon an obligation to pay for his idea if it is used. Indeed, Exhibit D still consists of the same letter from the NFL's legal department that states Reed's submissions went "unreviewed."

The SAC does not substantively differ from the original complaint in that it contains allegations related to Defendants' purported knowledge of the "standard industry practice" under which "it is reasonable to expect that a pitch will be kept confidential, and that if a pitch turned into a commercially successful television series, the creator would be reasonably compensated." SAC ¶ 1. Reed fails to allege any exchanges with Defendants, however, which demonstrate that Defendants took steps to evaluate his proposal or that they acted in conformance with any industry practice or other understanding to compensate him for his ideas. *Id.* Reed has not alleged adequate facts to state a claim for breach of an implied contract. *See Desny*, 46 Cal. 2d at 739.

Accordingly, the Court **GRANTS** Defendants' motion to dismiss Reed's breach of implied-in-fact contract claim.

B. Breach of Confidence

The Court incorporates herein its discussion of Reed's claim for breach of confidence from its prior Order. Sept. 24, 2015 Order at 6. To state a claim for breach of confidence, Reed must show defendants' knowledge that the information was being disclosed in confidence. *Id.* (citing *Aliotti v. R. Dakin & Co.*, 831 F.2d 898, 903 (9th Cir. 1987)). Yet, Reed's allegations continue to suggest the opposite—that the information he conveyed was not confidential. *See* SAC, Ex. B (Reed's television-proposal email to Adden, stating that he had already "contacted a few networks about my show to date"). The fact that Reed sent eight emails to NFL employees rather than just one does little to bolster his claim. There are simply no new factual allegations that plausibly demonstrate that Reed conveyed information on the condition of confidentiality or that there was any understanding reached between the parties regarding the maintenance of confidentiality.

Accordingly, Defendants' motion to dismiss Reed's breach of confidence claim is **GRANTED**.

C. California's Unfair Competition Law

The Court incorporates herein its discussion of Reed's UCL claim from its Sept. 24, 2015 Order. *Id.* at 6-8.

To the extent Reed brings a UCL claim in his SAC under the "unlawful" prong, his claim fails. Because Reed's claims for breach of implied-in-fact contract and breach of confidence—the "borrowed" laws—fail, so too must his UCL claim under this prong.

Similarly, assuming that Reed brings a UCL claim under the "unfair" prong, it too fails. Reed still does not adequately allege facts that Defendants engaged in a business practice that "significantly threatens or harms competition." *Id.* at 7; SAC ¶ 32.

Finally, as to the "fraudulent" prong, Reed again fails to allege facts to satisfy Federal Rule of Civil Procedure 9(b)'s heightened pleading requirement, much less identify a specific fraudulent statement made by any defendant.

Thus, Defendants' motion to dismiss Reed's UCL claim is **GRANTED**.

D. Leave to Amend

While leave to amend should generally be liberally granted, courts have the discretion to deny leave to amend for futility of amendment. *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir. 2008) (citing *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227 (1962)). "Further, the district court's discretion to deny leave to amend is particularly broad where plaintiff has previously amended the complaint." *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1058 (9th Cir. 2011) (internal quotation omitted).

Here, the Court previously granted leave to amend in its Sept. 24, 2015 Order. Reed's SAC is nearly identical to the previous complaint, and adds essentially no new allegations other than pointing out that he sent more than one email to NFL employees. As such, granting additional leave to amend would be futile, would waste judicial resources, and would require Defendants to bring a third motion no doubt raising the same issues. *Rupert v. Bond*, 68 F. Supp. 3d 1142, 1166, 1168 (N.D. Cal. 2014) (dismissing with prejudice because plaintiff's amended complaint re-alleged the same theories predicated on the same facts that had been previously rejected twice); *Wanxia Liao v. U.S.*, 2012 WL 3945772, at *6 (N.D. Cal. Apr. 16, 2012) (finding that granting leave to amend would be futile because plaintiff already had an opportunity to amend and still provided insufficient allegations); *U.S. Care, Inc. v. Pioneer Life Ins. Co. of Illinois*, 244 F. Supp. 2d 1057, 1065 (C.D. Cal. 2002) (dismissing with prejudice where plaintiff did not suggest "that it can allege additional facts which support its claim for relief.").

V.
CONCLUSION

In light of the foregoing, Defendants' Motion to Dismiss is **GRANTED** with prejudice.

IT IS SO ORDERED.