

SEP 24 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARL E. PERSON,

Plaintiff - Appellant,

v.

GOOGLE, INCORPORATED,

Defendant - Appellee.

No. 07-16367

D.C. No. CV-06-07297-JF

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Jeremy D. Fogel, District Judge, Presiding

Submitted September 16, 2009\*\*  
San Francisco, California

Before: REINHARDT and BEA, Circuit Judges, and LARSON,\*\*\* District Judge.

Carl E. Person, *pro se*, appeals the district court's dismissal of his Second Amended Complaint ("SAC") against Google, Inc. Person alleged that Google

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Stephen Larson, United States District Court for the Central District of California, sitting by designation.

violated the Sherman Act § 2 for “monopolizing and combining to monopolize the search advertising market and submarket for monetizing the traffic of community search websites.” Person alleges, in the alternative, attempted monopolization under the Sherman Act § 2. The district court dismissed Person’s SAC under Federal Rule of Civil Procedure 12(b)(6). We affirm.

Person has failed to plead facts sufficient to raise the allegations in his complaint that Google engaged in exclusionary, anticompetitive, or predatory behavior beyond a speculative level. *See Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 557 (2007). Because we hold that Person has failed adequately to allege that Google engaged in exclusionary, anticompetitive, or predatory behavior, we do not reach the question whether Person pleaded facts sufficient to show a relevant market.

**AFFIRMED.**