

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 13 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NING XIANHUA,

No. 22-15700

Plaintiff-Appellant,

D.C. No. 4:20-cv-06185-HSG

v.

MEMORANDUM*

OATH HOLDINGS, INC., DBA Yahoo!
Inc., and as successor in interest to Yahoo!
Inc.; ALTABA INC., FKA Yahoo! Inc., and
as successor in interest to Yahoo! Inc.;
TERRY SEMEL; JERRY YANG,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of California
Haywood S. Gilliam, Jr., District Judge, Presiding

Argued and Submitted February 8, 2023
San Francisco, California

Before: McKEOWN, BYBEE, and BUMATAY, Circuit Judges.

Ning Xianhua appeals the district court's order dismissing his action asserting claims under the Alien Tort Statute ("ATS"), 28 U.S.C. § 1350, Torture Victim Protection Act ("TVPA"), *id.* note § 2(a), and California's unfair

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

competition law (“UCL”), Bus. & Prof. Code § 17200 *et seq.* We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court’s dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Curry v. Yelp, Inc.*, 875 F.3d 1219, 1224 (9th Cir. 2017). We affirm the district court’s dismissal, but on alternative grounds.

While Ning’s complaint barely meets the pleading standard, *see* Fed. R. Civ. P. 8, he nevertheless fails to state a claim under any of the statutes against the individual or corporate defendants-appellees.

Ning fails to state a claim under the ATS because he did not allege a permissible extraterritorial application of the Statute. *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 117 (2013). Even assuming aiding-and-abetting conduct is relevant to the extraterritoriality analysis, **Ning’s complaint fails to plausibly allege relevant conduct within the United States beyond “general corporate activity.”** *Nestlé USA, Inc. v. Doe*, 141 S. Ct. 1931, 1936–37 (2021).

Ning fails to state a claim under the TVPA because he did not sufficiently allege state action. **His complaint fails to plausibly allege that Terry Semel and Jerry Yang acted under actual or apparent authority, or color of law, of the People’s Republic of China.** *See* 28 U.S.C. § 1350 note § 2(a); *Mohamad v. Palestinian Auth.*, 566 U.S. 449, 453–56, 461 (2012) (holding that only individuals may be liable under the TVPA).

Finally, Ning fails to state a claim under the UCL because he impermissibly seeks nonrestitutionary disgorgement of profits. *Zhang v. Superior Ct.*, 304 P.3d 163, 167–68 (Cal. 2013) (“Restitution under [the UCL] is confined to restoration of any interest in ‘money or property, real or personal, which may have been acquired by means of such unfair competition.’”); *Korea Supply Co. v. Lockheed Martin Corp.*, 63 P.3d 937, 943 (Cal. 2003) (“[D]isgorgement of money obtained through an unfair business practice is an available remedy . . . only to the extent that it constitutes restitution.”).

Because Ning fails to state a claim under the ATS, TVPA, or California’s UCL, we **AFFIRM** the district court’s order dismissing the action.